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## A BILL ENTITLED

AN Act concerning

### **Nontidal Wetlands and Waterways – State Assumption of the Federal Section 404 Permit Program**

FOR the purpose of adding and altering certain definitions; ADDING AND ALTERING CERTAIN PUBLIC NOTICE REQUIREMENTS; requiring certain applicants to comply with nontidal wetland and waterway requirements; establishing exemptions for certain agricultural and forestry activities; establishing authority for issuance of general permits; substituting general permits for certain exemptions; requiring the issuance of general permits for certain agricultural, forestry, and other activities with minimal impacts; establishing certain citizen participation provisions; providing for coordination with federal agencies; adding administrative and certain other penalty provisions; substituting issuance of programmatic general permits for delegation to local governments; adding provisions for protection of endangered species; authorizing right of entry for Department representatives; directing the Department to pursue assumption of the federal Section 404 permit program under the Clean Water Act; making this Act subject to a certain contingency; and generally relating to changes necessary to obtain assumption of the federal Section 404 permit program.

BY repealing and reenacting, with amendments

Article – Environment

Section 5-101, 5-204, 5-501, 5-503, 5-505, 5-514, 5-901 through 5-907,  
and 5-909 through 5-911

Annotated Code of Maryland

(2013 Replacement Volume and 2015 Supplement)

BY adding to

Article – Environment

Section 5-912

Annotated Code of Maryland

(2013 Replacement Volume and 2015 Supplement)

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SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Environment

5–101.

(a) In this title the following words have the meanings indicated.

(b) “Administration” means the Water Management Administration.

(c) “Appropriate county governing body” means the county commissioners of any nonchartered county or the county council of any chartered county in which a portion of the watershed is located.

**(D) “CLEAN WATER ACT” MEANS THE CLEAN WATER ACT OF 1977, 33 U.S.C. § 1344, AS AMENDED, AND FEDERAL REGULATIONS ADOPTED PURSUANT THERETO.**

~~[(d)]~~ **(E)** “County” includes Baltimore City unless otherwise indicated.

~~[(e)]~~ **(F)** “Department” means the Department of the Environment.

~~[(f)]~~ **(G)** “Director” means the Director of the Water Management Administration.

~~[(g)]~~ **(H)** “Person” includes the federal government, the State, any county, municipal corporation, or other political subdivision of the State, or any of their units, or an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, association, public or private corporation, or any other entity.

~~[(h)]~~ **(I)** (1) “Pollution” means every contamination or other alteration of the physical, chemical, or biological properties of any waters of the State.

(2) “Pollution” includes change in temperature, taste, color, turbidity, or odor of the waters of the State or the discharge or deposit of any

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organic matter, harmful organism, or liquid, gaseous, solid, radioactive, or other substance into any waters of the State as will render the waters of the State harmful, detrimental, or injurious to public health, safety, or welfare, domestic, commercial, industrial, agricultural, recreational, other legitimate beneficial uses, or livestock, wild animals, birds or fish or other aquatic life.

**[(i)] (J)** “Public water system” has the meaning stated in § 9–401 of this article.

**[(j)] (K)** “Secretary” means the Secretary of the Environment.

**(L) “WATER DEPENDENT ACTIVITY” MEANS AN ACTIVITY REQUIRING ACCESS OR PROXIMITY TO, OR SITING WITHIN, WATERS OF THE STATE, INCLUDING NONTIDAL WETLANDS, TO FULFILL THE BASIC PURPOSE OF THE PROJECT.**

**[(k)] (M)** “Water management strategy area” means an area designated by the Department in which a specific water resource problem has been identified and for which the Department has adopted specific water use restrictions or criteria for permit approval in order to protect the water resource or existing water users.

**[(l)] (N)** “WATERS OF THE STATE” INCLUDES:

**(1) BOTH SURFACE AND UNDERGROUND WATERS WITHIN THE BOUNDARIES OF THE STATE SUBJECT TO ITS JURISDICTION;**

**(2) THAT PORTION OF THE ATLANTIC OCEAN WITHIN THE BOUNDARIES OF THE STATE;**

**(3) THE CHESAPEAKE BAY AND ITS TRIBUTARIES;**

**(4) ALL PONDS, LAKES, RIVERS, PERENNIAL, INTERMITTENT AND EPHEMERAL STREAMS, IMPOUNDMENTS, DITCHES, PUBLIC DITCHES, TAX DITCHES, AND PUBLIC DRAINAGE SYSTEMS WITHIN THE STATE, OTHER THAN THOSE DESIGNED AND USED TO COLLECT, CONVEY, OR DISPOSE OF SANITARY SEWAGE;**

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**(5) THE FLOODPLAIN OF FREE-FLOWING WATERS DETERMINED BY THE DEPARTMENT ON THE BASIS OF THE 100-YEAR FLOOD FREQUENCY;**

**(6) NONTIDAL WETLANDS AS DEFINED IN § 5-901(P) OF THIS TITLE; AND**

**(7) TIDAL WETLANDS AS DEFINED IN § 16-101(L) AND § 16-101(P) OF THIS TITLE.**

5-204.

(a) (1) It is the intent of the General Assembly to establish consolidated procedures and notice and hearing requirements for Subtitles 5 and 9 of this title and Titles 14, 15, and 16 of this article in order to ensure efficient review and consistent decision making.

(2) Notwithstanding any provision of the State Government Article, public notice on pending applications provided in accordance with the provisions of this section shall be the only notice required by law.

(b) (1) Applicants shall ascertain the names and addresses of all current owners of property contiguous to the parcel upon which the proposed activity will occur and personally or by certified mail serve notice upon each owner.

(2) Applicants shall serve personally or by certified mail appropriate local officials.

(3) Applicants shall provide the Department with certification that notice has been served on all contiguous property owners and appropriate local officials.

(4) Upon substantial completion of an application, the Department shall draft a public notice that includes:

(i) The name and address of the applicant;

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(ii) A description of the location and nature of the activity for which application has been made[;], WHICH MAY INCLUDE THE FOLLOWING INFORMATION:

1. A BRIEF DESCRIPTION OF THE PROPOSED ACTIVITY, ITS PURPOSE AND INTENDED USE, SO AS TO PROVIDE SUFFICIENT INFORMATION CONCERNING THE NATURE OF THE ACTIVITY TO GENERATE MEANINGFUL COMMENTS, INCLUDING A DESCRIPTION OF THE TYPE OF STRUCTURES, IF ANY, TO BE ERECTED AND A DESCRIPTION OF THE TYPE, COMPOSITION AND QUANTITY OF MATERIALS TO BE DISCHARGED;

2. A PLAN AND ELEVATION DRAWING SHOWING THE GENERAL AND SPECIFIC SITE LOCATION AND CHARACTER OF ALL PROPOSED ACTIVITIES, INCLUDING THE RELATIONSHIP OF THE SIZE OF THE PROPOSED STRUCTURES TO THE SIZE OF THE IMPACTED WATERWAY AND DEPTH OF WATER IN THE AREA.

3. A PARAGRAPH DESCRIBING THE VARIOUS EVALUATION FACTORS, INCLUDING THE CRITERIA ESTABLISHED UNDER SECTION 404(B)(1) OF THE CLEAN WATER ACT (40 C.F.R. 230) OR STATE-EQUIVALENT CRITERIA, ON WHICH DECISIONS ARE BASED.

(iii) The name, address, [and] telephone number, AND ELECTRONIC MAIL ADDRESS of the office OR PERSON within the Department from which information about the application may be obtained;

(iv) A statement that any further notices about actions on the application will be provided only by mail OR ELECTRONIC MAIL to those persons on a mailing list of interested persons;

(v) A description of how persons may submit information or comments about the application, request a public informational hearing, or request to be included on the mailing list of interested persons; and

(vi) A deadline, NORMALLY AT LEAST 30 DAYS FROM THE DATE OF THE NOTICE, for the close of the public comment period by which information, comments, or requests must be received by the Department.

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(5) The Department shall prepare a public notice to be published for at least 1 business day in a newspaper of general circulation in the area where the proposed activity would occur. At its discretion, the Department shall:

- (i) Publish the public notice; or
- (ii) Direct the applicant to publish the public notice.

(6) The applicant shall bear the cost of the newspaper notice.

(7) The Department shall **[mail] DISTRIBUTE** public notices to a general subscription mailing list **BY MAIL OR ELECTRONIC MAIL**.

(8) THE DEPARTMENT SHALL DISTRIBUTE PUBLIC NOTICES FOR APPLICATIONS SUBMITTED UNDER § 5-503 AND § 5-906 OF THIS TITLE BY MAIL OR ELECTRONIC MAIL TO THE FOLLOWING PERSONS:

- (I) THE APPLICANT;
- (II) ANY AGENCY WITH JURISDICTION OVER THE PROPOSED ACTIVITY, WHETHER OR NOT THE AGENCY ISSUES A PERMIT; AND
- (III) ANY STATE WHOSE WATERS MAY BE AFFECTED BY THE PROPOSED ACTIVITY.

**[(8)] (9)** Comments on an application or requests for a public informational hearing must be forwarded in writing to the Department prior to the close of the public comment period specified in the public notice.

**[(9)] (10)** The Department shall compile an interested persons list containing the names of all contiguous property owners, appropriate local officials, and individuals that comment on, request hearings, or make inquiries about an application during any phase of the Department's review.

**[(10)] (11)** No further notice will be provided except to persons on the interested persons list.

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(c) The Department shall hold a public informational hearing if it receives a timely written request in accordance with the following provisions:

(1) The request shall be received prior to the close of the public comment period.

(2) A public informational hearing shall be held within ~~[45]~~ 60 calendar days of the close of the public comment period.

(3) ~~[The Department shall specify the date, time, and location of the public hearing.]~~ NOTICE OF THE PUBLIC INFORMATIONAL HEARING SHALL CONTAIN THE FOLLOWING INFORMATION:

(I) THE DATE, TIME AND LOCATION OF THE PUBLIC INFORMATIONAL HEARING;

(II) A REFERENCE TO THE DATE OF ANY PREVIOUS PUBLIC NOTICES RELATING TO THE APPLICATION; AND

(III) A BRIEF DESCRIPTION OF THE NATURE AND PURPOSE OF THE HEARING.

(4) (I) The Department shall ~~[mail]~~ DISTRIBUTE notice of the date, time, and location of any public informational hearing on an application to those persons on the interested persons list BY MAIL OR ELECTRONIC MAIL no later than 14 calendar days prior to the hearing.

(II) FOR APPLICATIONS UNDER § 5-503 AND § 5-906 OF THIS TITLE, THE PUBLIC INFORMATIONAL HEARING NOTICE SHALL BE DISTRIBUTED TO THE INTERESTED PERSONS LIST NO LATER THAN 30 CALENDAR DAYS PRIOR TO THE HEARING.

(5) The Department may extend the official record of a public informational hearing.

(6) THE PUBLIC COMMENT PERIOD ON THE APPLICATION SHALL BE AUTOMATICALLY EXTENDED TO COINCIDE WITH THE DATE OF THE PUBLIC INFORMATIONAL HEARING OR THE CLOSE OF THE OFFICIAL RECORD OF THE

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# PUBLIC INFORMATIONAL HEARING.

(7) (I) PUBLIC INFORMATIONAL HEARINGS CONDUCTED FOR APPLICATIONS UNDER § 5-503 AND § 5-906 OF THIS TITLE, SHALL BE REPORTED VERBATIM.

(II) THE APPLICANT SHALL BEAR THE COST OF THE PUBLIC INFORMATIONAL HEARING REPORTER.

(III) COPIES OF THE RECORD OF PROCEEDINGS MAY BE PURCHASED BY ANY PERSON FROM THE REPORTER OF SUCH HEARING.

(IV) THE DEPARTMENT SHALL MAKE A COPY OF THE TRANSCRIPT OR, IF NONE IS PREPARED, A TAPE OF THE PROCEEDINGS AVAILABLE FOR PUBLIC INSPECTION.

(d) Following the application review and comment period and within 30 calendar days after the close of the public informational hearing record, the Department shall issue, modify, or deny the permit or license unless extenuating circumstances justify an extension of time.

(e) The Department shall [mail] DISTRIBUTE notice of a decision to issue, modify, or deny a permit or license to the applicant and to those persons on the interested persons list BY MAIL OR ELECTRONIC MAIL.

(f) (1) A final determination by the Department on the issuance, denial, renewal, or revision of any permit issued under Subtitle 5 or Subtitle 9 of this title or § 14-105, § 14-508, § 15-808, or § 16-307 of this article is subject to judicial review at the request of any person that:

(i) Meets the threshold standing requirements under federal law; and

(ii) 1. Is the applicant; or  
2. Participated in a public participation process through the submission of written or oral comments, unless an opportunity for public participation was not provided.



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(2) For permits listed under paragraph (1) of this subsection, a contested case hearing may not occur.

(g) A person petitioning for judicial review in accordance with this section shall file the petition in accordance with the Maryland Rules.

(h) (1) Judicial review shall be on the administrative record before the Department and limited to objections raised during the public comment period, unless the petitioner demonstrates that:

(i) The objections were not reasonably ascertainable during the comment period; or

(ii) Grounds for the objections arose after the comment period.

(2) The court shall remand the matter to the Department for consideration of objections under paragraph (1) of this subsection.

(i) (1) Unless otherwise required by statute, a petition for judicial review by a person who meets the requirements of subsection (f) of this section shall be filed with the circuit court for the county where the application for the permit states that the proposed activity will occur.

(2) Judicial review under this section shall be conducted in accordance with Title 1, Subtitle 6 of this article.

5-501.

(a) In order to conserve, protect, and use water resources of the State in accordance with the best interests of the people of Maryland, it is the policy of the State to control, so far as feasible, appropriation or use of surface waters and groundwaters of the State. Also, it is State policy to promote public safety and welfare and control and supervise, so far as is feasible, construction, reconstruction, and repair of dams, reservoirs, and other waterworks in any waters of the State.

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(b) (1) In accordance with the policy declared in this section, and provided that it will not jeopardize the State's natural resources, when appropriating groundwater of the State in Carroll, Frederick, or Washington counties, the Department may give priority to a public water system that provides water to:

(i) A municipal corporation, not including those areas annexed after January 1, 2000; or

(ii) A priority funding area established on or before January 1, 2000, under § 5-7B-02(6) of the State Finance and Procurement Article.

(2) The Department may adopt regulations to implement this subsection.

(c) [This subtitle is in addition to and not in substitution for any existing laws of the State] **FOR THE PURPOSE OF ASSUMPTION OF THE FEDERAL PERMIT PROGRAM UNDER SECTION 404 OF THE CLEAN WATER ACT, ACTIVITIES REGULATED UNDER § 5-503 AND § 5-906 OF THIS TITLE SHALL BE REVIEWED IN A SINGLE REGULATORY PROCESS.**

**(D) THE DEPARTMENT SHALL ADOPT REGULATIONS TO IMPLEMENT ASSUMPTION OF THE FEDERAL PERMIT PROGRAM UNDER SECTION 404 OF THE CLEAN WATER ACT.**

**(E) THIS SUBTITLE IS IN ADDITION TO AND NOT IN SUBSTITUTION FOR ANY EXISTING LAWS OF THE STATE.**

5-502.

(a) Every person is required to obtain a permit from the Department to appropriate or use or begin to construct any plant, building, or structure which may appropriate or use any waters of the State, whether surface water or groundwater. The permit is obtained upon written application to the Department. The applicant shall provide the Department with satisfactory proof that the proposed withdrawal of water will not jeopardize the State's natural resources.

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(b) This section does not apply to:

(1) Use of water for domestic purposes other than for heating and cooling;

(2) Use of water for agricultural purposes, if the average annual water use is less than 10,000 gallons per day, except as provided in subsection (c)(2) of this section; or

(3) Use of groundwater at an average annual water use of 5,000 gallons of water per day or less, provided that:

(i) 1. The use is not for a public water system that:

A. Serves at least 15 service connections used by year-round residents of the area served by the system; or

B. Regularly serves at least 25 year-round residents; or

2. The use will not occur within a water management strategy area established by the Department; and

(ii) The user files a notice of exemption with the Department at least 30 days before the use is proposed to begin.

(c) (1) The Department shall issue a permit to a person using water prior to July 1, 1988 for agricultural purposes upon written application to the Department.

(2) A person using less than an annual average of 10,000 gallons of water per day for agricultural purposes may apply for a permit to appropriate or use waters of the State.

(d) When the Department determines that a water supply emergency exists and available water supplies are inadequate in an

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area to meet the needs of all persons who have permits under this subtitle, the following uses shall have priority for appropriation or use of water in the order listed:

(1) Domestic and municipal uses for sanitation, drinking water, and public health and safety;

(2) Agricultural uses, including the processing of agricultural products; and

(3) All other uses.

(e) Notwithstanding any other provision of this subtitle, an application for a certificate of public convenience and necessity associated with power plant construction which involves use or diversion of waters of the State made to the Public Service Commission under the Public Utilities Article constitutes an application for the permit required by this section, and the provisions of § 3-306 of the Natural Resources Article apply. If an application is made to the Public Service Commission, the hearing provided for by this subtitle is not required. All evidence relevant to the purposes of this subtitle shall be presented at the hearing held by the Public Service Commission, as required by § 7-207 of the Public Utilities Article. The permit required by this subtitle is included in the certificate of public convenience and necessity issued by the Public Service Commission.

5-503.

**(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

(2) (I) "GENERAL PERMIT" MEANS A PERMIT AUTHORIZING THE CONDUCT OF A CATEGORY OF ACTIVITIES IN WATERS OF THE STATE, INCLUDING NONTIDAL WETLANDS.

(II) GENERAL PERMITS ARE PERMITS FOR PROPOSED ACTIVITIES WHICH ARE SIMILAR IN NATURE, WILL CAUSE ONLY MINIMAL

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ADVERSE ENVIRONMENTAL EFFECTS WHEN PERFORMED SEPARATELY, AND WILL HAVE ONLY MINIMAL CUMULATIVE ADVERSE EFFECT ON THE ENVIRONMENT.

(3) (I) “MITIGATION” MEANS THE CREATION, RESTORATION, OR ENHANCEMENT OF NONTIDAL WATERWAYS THAT WERE OR WILL BE IMPACTED DUE TO REGULATED ACTIVITIES.

(II) MITIGATION MAY INCLUDE MONETARY COMPENSATION.

(III) MITIGATION REQUIRED BY A STATE ACTION PURSUANT TO AN ASSUMED FEDERAL PERMIT PROGRAM UNDER SECTION 404 OF THE CLEAN WATER ACT SHALL BE CONSISTENT WITH THE REQUIREMENTS OF THE FEDERAL MITIGATION RULE (40 C.F.R. PART 230, SUBPART J, SECTION .91 – SECTION .98).

(4) “MITIGATION BANKING” MEANS WATERWAY RESTORATION, CREATION, OR ENHANCEMENT UNDERTAKEN EXPRESSLY FOR THE PURPOSE OF PROVIDING COMPENSATION CREDITS FOR IMPACTS FROM FUTURE ACTIVITIES.

(5) “PROGRAMMATIC GENERAL PERMIT” MEANS A GENERAL PERMIT ISSUED TO A COUNTY WITH AN EXISTING REGULATORY PROGRAM AS PROVIDED FOR IN §§ 5-503 AND 5-904 OF THIS TITLE.

(6) “SERVICE AREA” MEANS THE GEOGRAPHIC AREA WITHIN WHICH IMPACTS CAN BE MITIGATED AT A SPECIFIC MITIGATION BANK, AS DESIGNATED IN ITS INSTRUMENT.

[(a)] (B) (1) A person shall obtain a permit from the Department to construct, reconstruct, or repair any reservoir, dam, or waterway obstruction, to make, construct, or permit to be made or constructed any change or addition to any reservoir, dam, or waterway obstruction, to make or permit to be made any change in, addition to, or repair of any existing waterway obstruction, or in any manner, **INCLUDING THE DISCHARGE OF DREDGED OR FILL MATERIAL**, to change in whole or part the course, current, or cross section of [any stream or body of water within] **WATERS OF the**

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State, except tidal waters. The permit is obtained upon written application to the Department.

**(2) (i) If by March 1, 1982 a flood management plan for Jones Falls is not prepared and approved and implementation begun under § 5-803 of this title, the Department shall adopt regulations limiting construction, reconstruction, or changes in the course, current, or cross section of the channel and floodplain of the Jones Falls in the Patapsco River watershed until such time as a flood management plan for Jones Falls is prepared, approved, and implemented under Subtitle 8 of this title.**

**(ii) Regulations adopted pursuant to this paragraph may not apply:**

**1. To floodproofing of any existing structure;**  
or

**2. If use of the Pennington Avenue sanitary landfill site in Baltimore City as a sanitary landfill is terminated by the end of May 1, 1981, to any construction, reconstruction, development, or use of those properties in Baltimore City comprising and known as the Woodberry Quarry sanitary landfill site.**

**(3) Due to variances in floodplain measurements, a new residential permit for construction in the Jones Falls floodplain within 25 feet adjacent to the floodplain may not be approved or issued until the flood management plan for the Jones Falls is prepared, approved, and implemented under Subtitle 8 of this title.**

**(4) Regulations adopted by the Department as required under paragraph (2) of this subsection shall be null and void if the Department determines that a flood management plan for the Jones Falls in the Patapsco River has been adopted and implemented.]**

**(2) (I) AN APPLICANT SHALL TAKE ALL NECESSARY STEPS TO FIRST AVOID SIGNIFICANT IMPAIRMENT AND THEN MINIMIZE IMPACTS TO THE NONTIDAL WATERWAY.**

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(II) IF THE APPLICANT DEMONSTRATES TO THE DEPARTMENT'S SATISFACTION THAT ALL NECESSARY STEPS WERE TAKEN AND IMPACTS OR SIGNIFICANT IMPAIRMENT OF NONTIDAL WATERWAYS ARE UNAVOIDABLE, THE DEPARTMENT SHALL REQUIRE THE APPLICANT TO ADOPT MITIGATION PRACTICES.

(3) (I) THE DEPARTMENT SHALL ADOPT BY REGULATION STANDARDS AND PROCEDURES FOR THE MITIGATION OF NONTIDAL WATERWAY IMPACTS, INCLUDING PRACTICES FOR NONTIDAL WATERWAY CREATION, RESTORATION, AND ENHANCEMENT, OR MONETARY COMPENSATION.

(II) 1. THE DEPARTMENT MAY ACCEPT MONETARY COMPENSATION ONLY IF IT IS DETERMINED THAT:

A. THE CREATION, RESTORATION, OR ENHANCEMENT OF NONTIDAL WATERWAYS ON-SITE ARE NOT [FEASIBLE ALTERNATIVES] ENVIRONMENTALLY PREFERABLE ALTERNATIVES; AND

B. THE REQUIRED MITIGATION CANNOT BE ACCOMPLISHED IN A MITIGATION BANK APPROVED BY THE DEPARTMENT.

2. MONETARY COMPENSATION MAY NOT BE A SUBSTITUTE FOR THE REQUIREMENT TO AVOID AND MINIMIZE NONTIDAL WETLAND LOSSES.

(4) (I) THE DEPARTMENT MAY ISSUE GENERAL PERMITS.

(II) PRIOR TO THE PROMULGATION AND ADOPTION OF A GENERAL PERMIT PURSUANT TO AN ASSUMED FEDERAL PERMIT PROGRAM UNDER SECTION 404 OF THE CLEAN WATER ACT, THE U. S. ENVIRONMENTAL PROTECTION AGENCY SHALL REVIEW AND APPROVE THE GENERAL PERMIT IN ACCORDANCE WITH THE MEMORANDUM OF AGREEMENT BETWEEN THE U. S. ENVIRONMENTAL PROTECTION AGENCY AND THE DEPARTMENT CONCERNING ASSUMPTION OF THE FEDERAL PERMIT PROGRAM.

(III) GENERAL PERMITS MAY REQUIRE:

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| Sentence case language    | Existing statutory language  |
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| Sentence case language    | New statutory language enacted by the 2016 Maryland General Assembly |
| Stricken language         | Existing statutory language repealed by this legislation             |
| <b>UPPERCASE LANGUAGE</b> | <b>AMENDMENTS PREVIOUSLY REVIEWED BY EPA REGION III</b>              |
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1. SUBMISSION OF AN APPLICATION FOR INDIVIDUAL APPROVALS;
2. APPROVAL OF A SOIL CONSERVATION AND WATER QUALITY PLAN;
3. APPROVAL OF AN EROSION AND SEDIMENT CONTROL PLAN;
4. BEST MANAGEMENT PRACTICES;
5. MONITORING PROVISIONS AND REPORTING REQUIREMENTS;
6. MITIGATION OF IMPACTS TO WATERS OF THE STATE;
7. ISSUANCE OF A LETTER OF AUTHORIZATION; OR
8. ADDITIONAL CONDITIONS CONSIDERED APPROPRIATE BY THE DEPARTMENT.

(IV) THE DEPARTMENT SHALL PROVIDE FOR PUBLIC NOTICE AND COMMENT IN ACCORDANCE WITH § 5-204 OF THIS TITLE PRIOR TO THE ISSUANCE OF A GENERAL PERMIT.

(V) THE DEPARTMENT MAY SUSPEND, MODIFY, OR REVOKE A GENERAL PERMIT, OR REQUIRE A PERSON TO OBTAIN AN INDIVIDUAL PERMIT UNDER THIS SECTION, IF THE DEPARTMENT DETERMINES THAT A GENERAL PERMIT OR AN ACTIVITY AUTHORIZED BY A GENERAL PERMIT DOES NOT COMPLY WITH THE PROVISIONS OF THIS SUBTITLE.

(5) GENERAL PERMITS MAY INCLUDE THE FOLLOWING ACTIVITIES IN WATERS OF THE STATE, INCLUDING NONTIDAL WETLANDS:

(I) AGRICULTURAL DRAINAGE SYSTEMS FOR THE PURPOSE OF LOWERING THE LEVEL OF WATER IN THE SOIL, INCLUDING



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DRAINAGE SYSTEMS FINANCED OR MANAGED BY A PUBLIC DRAINAGE ASSOCIATION IF PLANS FOR CONSTRUCTION, OPERATION, AND MAINTENANCE HAVE BEEN APPROVED BY THE SECRETARY OF AGRICULTURE UNDER § 8-603 OF THE AGRICULTURE ARTICLE;

(ii) THE PERIODIC MAINTENANCE OF AGRICULTURAL DRAINAGE SYSTEMS CONSTRUCTED UNDER THE AUSPICES OF A PUBLIC DRAINAGE OR WATERSHED ASSOCIATION IF:

1. THE MAINTENANCE IS PERFORMED IN ACCORDANCE WITH A PERMIT FROM THE DEPARTMENT FOR THE ORIGINAL CONSTRUCTION OR RECONSTRUCTION OF THE DRAINAGE SYSTEM; OR

2. THE MAINTENANCE IS PERFORMED IN ACCORDANCE WITH AN OPERATION AND MAINTENANCE PLAN APPROVED BY THE LOCAL SOIL CONSERVATION DISTRICT AND THE SECRETARY OF AGRICULTURE UNDER § 8-603 OF THE AGRICULTURE ARTICLE; AND

(iii) THE REMOVAL OR DEMOLITION OF RESIDENTIAL STRUCTURES.

(6) IF A COUNTY ENACTS A WATERWAY PROTECTION PROGRAM THAT IS CONSISTENT WITH THE REQUIREMENTS OF THIS SUBTITLE AND SUBTITLE 9 OF THIS TITLE, THE DEPARTMENT MAY INCLUDE CERTAIN WATERWAY CONSTRUCTION ACTIVITIES IN A PROGRAMMATIC GENERAL PERMIT.

(7) UNLESS EXEMPTED BY STATUTE OR AUTHORIZED BY GENERAL PERMIT, AN ACTIVITY REGULATED UNDER THIS SUBSECTION SHALL ALSO COMPLY WITH THE REQUIREMENTS OF SUBTITLE 9 OF THIS TITLE.

**[(b)] (c) (1) A person WHO MEETS THE REQUIREMENTS OF § 5-905 OR HAS RECEIVED A GENERAL PERMIT UNDER § 5-906 OF THIS TITLE is exempt from the requirement of obtaining a permit from the Department UNDER THIS SECTION if:**

(i) The plans and specifications are approved by the appropriate soil conservation district;

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(ii) The pond is not located within drainage of the Gwynns Falls, Jones Falls, or Herring Run streams situated in or adjacent to Baltimore City;

(iii) The pond meets minimum standards for safety set forth in Department rules and regulations;

(iv) The contributory drainage area is less than 1 square mile (640 acres);

(v) The dam is not greater than 20 feet in height measured vertically from the lowest point on the top of the dam to the lowest point on the upstream toe of the dam;

(vi) The pond is a low hazard structure the failure of which is unlikely to cause loss of life or property damage; and

(vii) The pond is not a wastewater stabilization pond.

(2) The soil conservation district shall notify the Department of any pond approved under this subsection. Nothing in this subsection is a limitation on the Department's authority under this subtitle.

**[(c)] (D)** The Department, by regulation, may designate interjurisdictional watersheds in which any impoundment proposal is subject to review and approval by the Department for standards relating to safety and flood control. Gwynns Falls, Jones Falls, and Herring Run, situated in or adjacent to Baltimore City are designated interjurisdictional watersheds.

**[(d)] (E)** The provisions of this section do not restrict or limit the Department's jurisdiction over waste treatment structures, including but not limited to dams, impoundments, ponds, and lagoons or limit the applicability of any other laws administered by the Department.

**[(e)]** Agricultural drainage systems, for the purpose of lowering the level of water in the soil, with a total drainage area of 2,500 acres or less are exempt from the requirement of obtaining a permit from

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the Department, except that drainage systems financed or managed by a public drainage association are exempt from this requirement only if plans for construction, operation, and maintenance have been approved by the Secretary of Agriculture under § 8-603 of the Agriculture Article.

(f) The periodic maintenance of agricultural drainage systems constructed under the auspices of a public drainage or watershed association is exempt from the requirement of obtaining a permit from the Department if:

(1) The maintenance is performed in accordance with a permit from the Department for the original construction or reconstruction of the drainage system; or

(2) The maintenance is performed in accordance with an operation and maintenance plan approved by the local soil conservation district and the Secretary of Agriculture under § 8-603 of the Agriculture Article.

(g) The removal or demolition of residential structures is exempt from any permit requirement of this section.]

5-504.

A person shall obtain a permit from the Department to construct, reconstruct, change, or make an addition to any conduit, pipeline, wire cable, trestle, or other device, structure, or apparatus in, under, through, or over the bed or waters of the Potomac River. The permit is obtained upon written application to the Department. Obtaining, using, and holding this permit is subject severally to the provisions concerning permits found elsewhere in this subtitle.

5-505.

(A) Each application for a permit required by this subtitle shall be accompanied by maps, drawings, and specifications of proposed use or

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| <b>UPPERCASE LANGUAGE</b> | <b>AMENDMENTS PREVIOUSLY REVIEWED BY EPA REGION III</b>              |
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waterway obstruction, changes, additions, or repairs proposed to be made, and other data and information the Department requires.

**(B) AN APPLICATION FOR A PERMIT UNDER § 5-503 OF THIS SUBTITLE SHALL BE MADE IN CONJUNCTION WITH THE ASSUMED FEDERAL PERMIT PROGRAM AND SHALL BE SUBJECT TO THE PROCEDURES IN SUBTITLE 9 OF THIS TITLE. IN THE EVENT OF ANY CONFLICT BETWEEN THE PROCEDURES OF § 5-506 AND SUBTITLE 9, THE PROCEDURES OF SUBTITLE 9 SHALL APPLY.**

5-506.

(a) Upon application for a permit under this subtitle, and except as otherwise provided in this section, the procedures in § 5-204 of this title shall apply.

(b) Under the following conditions, the Department may waive the notice requirements and the holding of a public informational hearing on a permit application:

(1) If there is an emergency or a request to make minor repairs, the Department, upon written or oral application, may grant an application to repair any reservoir, dam, or waterway obstruction without notice or hearing. Repair necessary to save life or property may be made without an application, but notice shall be given promptly to the Department;

(2) If plans of other projects which conform to water resources development plans accepted and adopted by the Department were subject to public hearing, and the Department's review **OF A WATER APPROPRIATION PERMIT APPLICATION** finds no changed conditions in them since the last public review and comment to justify another hearing;

**[(3) If temporary structures constructed to provide access across streams during construction operations or to trap sediment or achieve another similar purpose meet minimum design standards the Department establishes, and are removed completely, in a manner acceptable to the Department, within 6 months after need for the structure is terminated;**

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(4) If the requested waterway construction permit is for temporary excavation, filling, or grading for the installation of utilities which meet minimum design standards acceptable to the Department and preconstruction contours which are to be reestablished upon installation of the utility;

(5) If the requested waterway construction permit is for clearing and grading activities disturbing less than 5,000 square feet of land area and disturbing less than 100 cubic yards of earth; or

(6) If the requested waterway construction permit is for livestock crossing of a stream.

(c) If contiguous property owners and interested persons who receive periodic reports are notified under § 5-204 of this title, the Department may waive the notice requirements of this section and the holding of a public informational hearing on a permit application for roads, bridges, or culverts if they meet minimum design standards acceptable to the Department and construction does not adversely affect known water resources projects.]

[(d)] (C) The Department shall waive notice requirements and the holding of a public hearing if the requested appropriation or use of waters of the State is for an agricultural use in effect prior to July 1, 1993.

[(e)] (D) Notwithstanding any other requirement of this section:

(1) The Department may waive the notice and hearing requirements of this section if the appropriation requested is for:

(i) An average annual water use of 10,000 gallons per day or less; or

(ii) A construction dewatering project; and

(2) The Department may waive the holding of a public informational hearing if the requested appropriation or use of waters of the

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| UPPERCASE LANGUAGE     | AMENDMENTS PREVIOUSLY REVIEWED BY EPA REGION III                     |
| UPPERCASE LANGUAGE     | AMENDMENTS REQUIRING REVIEW BY EPA REGION III                        |

State is greater than an average annual water use of 10,000 gallons per day but less than an average annual water use of 50,000 gallons per day.

5-507.

(a) (1) Before acting on any permit application, the Department shall weigh all respective public advantages and disadvantages and make all appropriate investigations. If the Department believes from the evidence before the Department and based upon State water resources policy declared in this subtitle that the applicant's plans provide greatest feasible utilization of the waters of the State, adequately preserve public safety, and promote the general public welfare, the Department shall grant the permit to appropriate or use the waters, construct, reconstruct, or repair the proposed reservoir, dam, or waterway obstruction, or accomplish any combination of these objectives. If the Department believes from the evidence before the Department that the proposed appropriation or use of State waters or proposed construction is inadequate, wasteful, dangerous, impracticable or detrimental to the best public interest, the Department may reject the application or suggest modifications to the proposed plans to protect the public welfare and safety.

**(2) THE DEPARTMENT MAY NOT GRANT A PERMIT UNDER § 5-503 OF THIS SUBTITLE UNLESS THE DEPARTMENT FINDS THAT THE ACTIVITY AUTHORIZED BY THE PERMIT WILL BE CONSISTENT WITH THE ENVIRONMENTAL CRITERIA ESTABLISHED UNDER SECTION 404(B)(1) OF THE CLEAN WATER ACT (40 C.F.R. 230).**

(b) (1) In granting any permit to appropriate or use water or construct any reservoir, dam or waterway obstruction, the Department may include any condition, term, or reservation concerning the character, amount, means, and manner of the appropriation or use or method of construction necessary to preserve proper control in the State and insure the safety and welfare of the people of the State. The Department may determine and specify what provisions to make, if any, in each permit granted to construct a dam or other waterwork for passage of fish.

(2) Any measuring and reporting of water use required of a permittee by the Department shall be effective and reasonable under the circumstances.

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(3) Any regulations concerning measuring and reporting of agricultural water use or determination of aquifer or stream flow characteristics prior to issuance of a water appropriation permit for an agricultural water use shall be adopted by the Department with the advice and consent of the Secretary of Agriculture.

5-508.

(a) Appropriation or use of any waters of the State, construction or beginning construction, making or beginning any change, addition, reconstruction, or repair of any reservoir, dam or waterway obstruction, only shall be in conformity with any term, condition, regulation, or restriction of the Department's permit or with any regulation the Department prescribes concerning any construction, change, addition, or repair.

(b) (1) Any term, condition, regulation, or restriction imposed on an appropriation or use of waters of the State or on a reservoir, dam, waterway obstruction, or change in the course, current, or cross section of any stream, **INCLUDING THE DISCHARGE OF DREDGED OR FILL MATERIAL**, through a permit issued pursuant to this subtitle, shall be binding on the owner of the permitted land or facility at the time the permit is issued and on any heirs, successors, or assigns of the owner's interest in the land or facility.

(2) As a condition of permit issuance or renewal under this subtitle to construct, reconstruct, change, add to, or repair any dam or reservoir, the Department shall require the owner of the permitted land or facility to record, in accordance with §§ 3-102 and 3-103 of the Real Property Article, a memorandum prepared by the Department of the terms, conditions, regulations, or restrictions applicable to that land or facility. The recording shall be at the expense of the landowner.

5-509.

(a) On complaint or the Department's own initiative, the Department may investigate or examine any reservoir, dam, or similar waterway construction. If the Department determines that the reservoir, dam, or similar waterway construction is unsafe, needs

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repair, or should be removed because the reservoir, dam, or similar waterway construction is unsafe and not repairable, the Department shall notify the owner in writing to repair or remove the object, as the situation warrants. The repair or removal work shall be completed within a reasonable time, which time shall be prescribed in the Department's notice.

(b) If the work is not completed in the time prescribed in the notice, the Department may have the work completed at the expense of the owner. The Department shall charge the owner for this expense, and if the repayment is not made within 30 days after written demand, the Department may bring an action in the proper court to recover this expense.

(c) This section does not apply to farm ponds used for agricultural purposes.

5-510.

(a) Except for permits issued for the appropriation or use of water for agricultural purposes, the Department shall prescribe a time limit not exceeding 2 years from the grant of a permit, during which [construction, reconstruction, or repair shall begin or] appropriation or use of water shall be completed.

(b) The Department shall prescribe a time limit, not more than 5 years from the grant of any permit, during which construction, reconstruction, or repair of reservoirs, dams, or waterway obstruction shall be completed.

(c) The Department may extend [a] THE permit-time limit FOR WATER APPROPRIATION AND USE PERMITS for good cause shown.

5-511.

The Department shall review triennially every appropriation and use of water for which a required permit is granted, to ascertain if the appropriation and use of water is being made according to quantity limitations and other conditions established by permit. Unless a



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permit is for the periodic appropriation or use of water for agricultural purposes, the Department shall correct a permit where the total quantity of water permitted to be appropriated and used is not used or needed.

5-512.

(a) The provisions of this subtitle do not amend or repeal:

(1) Any law relating to the Public Service Commission or to water and water structures; or

(2) Any act or parts of acts consistent with the provisions of this subtitle.

(b) The provisions of this subtitle do not impair any riparian or other vested right, nor amend, repeal, limit, impair, or alter any right, power, or privilege granted by the General Assembly to the Mayor and City Council of Baltimore to appropriate or use any river, stream, or water in the State to augment and improve the municipal water supply of Baltimore City.

5-513.

On application of the Department, verified by oath or affirmation, the circuit court for any county, sitting in equity, may enforce by injunction, compliance with, or restraint from violating or attempting to violate any provisions of this subtitle or any Department order, notice, or regulation made under this subtitle.

5-514.

(a) (1) In addition to being subject to an injunctive action under this subtitle, a person who violates any provision of this subtitle relating to water appropriation and use or any rule, regulation, order, or permit adopted or issued under any such provision is liable for a civil penalty not exceeding \$5,000 per violation to be collected in a civil action brought by the Department.

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(2) Each day a violation occurs or continues is a separate violation under this subsection.

(3) (i) Before bringing a civil action against a local government under this subsection, the Department shall meet and consult with the local government to seek an alternative resolution to the contested issue.

(ii) Prior consultation by the Department with the local government shall constitute compliance with this subsection.

**[(b)] (4)** A person who violates a provision of this subtitle **[or a regulation adopted under this subtitle]** **RELATING TO WATER APPROPRIATION AND USE OR ANY RULE, REGULATION, ORDER, OR PERMIT ADOPTED OR ISSUED UNDER ANY SUCH PROVISION** is subject to the penalties provided in § 9–343 of this article.

**[(c)] (5)** All funds collected by the Department under this **[section]** **SUBSECTION**, including any civil penalty or any fine imposed by a court under the provisions of this **[section]** **SUBSECTION**, shall be paid into the Maryland Clean Water Fund.

**(B) IN ADDITION TO BEING SUBJECT TO AN INJUNCTIVE ACTION UNDER THIS SUBTITLE, A PERSON WHO VIOLATES OR FAILS TO COMPLY WITH A PROVISION OF THIS SUBTITLE RELATING TO THE CONSTRUCTION OR REPAIR OF A RESERVOIR, DAM, OR WATERWAY OBSTRUCTION OR A CHANGE IN THE COURSE, CURRENT, OR CROSS SECTION OF ANY STREAM, INCLUDING THE DISCHARGE OF DREDGED OR FILL MATERIAL, OR ANY RULE, REGULATION, ORDER, OR PERMIT ADOPTED OR ISSUED UNDER ANY SUCH PROVISION IS SUBJECT TO THE ENFORCEMENT PROVISIONS OF § 5-911 OF THIS TITLE.**

5–515.

(a) After or concurrently with the service of a complaint under this subtitle relating to water appropriation and use, the Department may:

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| Sentence case language    | Existing statutory language  |
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(1) Issue an order that requires the person to whom the order is directed to take corrective action within a time set in the order;

(2) Send a written notice that requires the person to whom the notice is directed to file a written report about the alleged violation; or

(3) Send a written notice that requires the person to whom the notice is directed:

(i) To appear at a hearing before the Department at a time and place the Department sets to answer the charges in the complaint; or

(ii) To file a written report and also to appear at a hearing before the Department at a time and place the Department sets to answer the charges in the complaint.

(b) Any order issued under this section is effective immediately, according to its terms, when it is served.

5-516.

(a) The Department shall give notice and hold any hearing related to orders imposed under the water appropriation and use provisions of this subtitle in accordance with the Administrative Procedure Act.

(b) (1) Within 10 days after being served with an order under § 5-515(a)(1) of this subtitle, the person served may request in writing a hearing before the Department.

(2) (i) Subject to subparagraph (ii) of this paragraph, if a request for a hearing on an order is made under this subsection, the Department shall:

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1. Hold the hearing promptly after receiving the request; and

2. Render a decision promptly after the hearing.

(ii) If a request for a hearing on an order is made under this subsection and the Department alleges in the order that there is an imminent threat or danger to the public health or safety or to the environment, the Department shall:

1. Hold the hearing within 10 days after receiving the request; and

2. Render a decision within 10 days after the hearing.

(c) Within 10 days after being served with a notice under § 5-515(a)(2) of this subtitle, the person served may request in writing a hearing before the Department.

(d) The Department may make a verbatim record of the proceedings of any hearing held under this subtitle.

(e) (1) In connection with any hearing under this subtitle, the Department may:

(i) Subpoena any person or evidence; and

(ii) Order a witness to give evidence.

(2) A subpoenaed witness shall receive the same fees and mileage reimbursement as if the hearing were part of a civil action.

(3) If a person fails to comply with a subpoena or order issued under this subsection, on petition of the Department, a circuit court, by order, may:

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(i) Compel obedience to the Department's order or subpoena; or

(ii) Compel testimony or the production of evidence.

(4) The court may punish as contempt any failure to obey its order issued under this section.

5-901.

(a) In this subtitle the following words have the meanings indicated.

**(B) "ADJACENT" MEANS BORDERING, CONTIGUOUS, OR NEIGHBORING.**

**[(b)] (C) (1) "Agricultural activity" means [aquaculture and farming activities] FARMING ACTIVITIES FOR THE PRODUCTION OF FOOD AND FIBER PRODUCTS.**

(2) "Agricultural activity" includes:

(i) Plowing, tillage, cropping, seeding, cultivating, and harvesting [for the production of food and fiber products]; and

(ii) The grazing of livestock.

**(D) "AQUATIC ENVIRONMENT" AND "AQUATIC ECOSYSTEM" MEAN WATERS OF THE STATE, INCLUDING NONTIDAL WETLANDS THAT SERVE AS HABITAT FOR INTERRELATED AND INTERACTING COMMUNITIES AND POPULATIONS OF PLANTS AND ANIMALS.**

**[(c)] (E) "Best management practices" means conservation practices or systems of practices and management measures that:**

(1) Control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxics, and sediment; and

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(2) Minimize adverse impacts to the surface water and groundwater flow and circulation patterns, and to the chemical, physical, and biological characteristics of [a nontidal wetland] **WATERS OF THE STATE, INCLUDING NONTIDAL WETLANDS.**

[(d) “Compensation ratio” means the ratio of the area of wetland restored, created, or enhanced to the area of wetland for which mitigation is required.]

[(e)] (F) “Department” means the Department of the Environment.

[(f)] (G) “Forestry activity” means planting, cultivating, thinning, harvesting, or any other activity undertaken to use forest [resources] **PRODUCTS** or to improve their quality or productivity.

(H) (1) “GENERAL PERMIT” MEANS A PERMIT AUTHORIZING THE CONDUCT OF A CATEGORY OF ACTIVITIES IN WATERS OF THE STATE, INCLUDING NONTIDAL WETLANDS.

(2) A GENERAL PERMIT AUTHORIZES ACTIVITIES WHICH ARE SIMILAR IN NATURE, WILL CAUSE ONLY MINIMAL ADVERSE ENVIRONMENTAL EFFECTS WHEN PERFORMED SEPARATELY, AND WILL HAVE ONLY MINIMAL CUMULATIVE ADVERSE EFFECT ON THE ENVIRONMENT.

(I) “Hydrologic unit” means a drainage area within:

(1) A multilevel hierarchical drainage system established under the National Watershed Boundary Dataset as published by the U. S. Geological Survey and as amended, revised, or replaced from time to time; and

(2) Which drainage boundaries are established using hydrographic and topographic data to delineate an area of land upstream from a specific point on a river, stream, or a similar surface water.

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(J) “Hydrologic Unit Code” means a numerical identifier that describes a hydrologic unit’s physical location and position within the drainage system hierarchy.

(K) “Instrument” means the formal written agreement between mitigation bank owners and the Department that establishes liability, performance standards, management and monitoring requirements, and the terms of bank credit approval.

(l) “Interagency Review Team” means an interagency group of federal, State, and local agencies that reviews documentation for, and advises the Department on, the establishment of proposed mitigation banks and the development of the instrument.

[(g)] (M) “Isolated nontidal wetland” means a nontidal wetland that is not hydrologically connected, through surface or subsurface flow, to streams, tidal or nontidal wetlands, or tidal waters.

(N) (1) **“MITIGATION” MEANS THE CREATION, RESTORATION, OR ENHANCEMENT OF NONTIDAL WETLANDS THAT WERE OR WILL BE LOST DUE TO REGULATED ACTIVITIES.**

(2) **MITIGATION MAY INCLUDE MONETARY COMPENSATION.**

(3) **MITIGATION REQUIRED BY A STATE ACTION PURSUANT TO AN ASSUMED FEDERAL PERMIT PROGRAM UNDER SECTION 404 OF THE CLEAN WATER ACT SHALL BE CONSISTENT WITH THE REQUIREMENTS OF THE FEDERAL MITIGATION RULE (40 C.F.R. PART 230, SUBPART J, SECTION .91 – SECTION .98).**

[(h)] (O) “Mitigation banking” means wetland restoration, creation, or enhancement undertaken expressly for the purpose of providing compensation credits for wetland losses from future activities.

[(i)] (P) (1) “Nontidal wetland” means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a

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prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

(2) The determination of whether an area is a nontidal wetland shall be made in accordance with the publication known as the [**“Federal Manual for Identifying and Delineating Jurisdictional Wetlands”, published in 1989**] **CORPS OF ENGINEERS WETLAND DELINEATION MANUAL, PUBLISHED IN 1987 AND AS MAY BE AMENDED, REVISED, SUPPLEMENTED, OR REPLACED.**

(3) “Nontidal wetlands” do not include tidal wetlands regulated under Title 16 of this article.

(Q) **“PRACTICABLE” MEANS AVAILABLE AND CAPABLE OF BEING DONE AFTER TAKING INTO CONSIDERATION COST, EXISTING TECHNOLOGY, AND LOGISTICS IN LIGHT OF OVERALL PROJECT PURPOSES.**

(R) **“PRIOR-CONVERTED CROPLAND” MEANS AN AREA THAT:**

(1) **WAS DRAINED, DREDGED, FILLED, GRADED, FLOODED, OR OTHERWISE MANIPULATED, INCLUDING THE REMOVAL OF WOODY VEGETATION OR THE IMPAIRMENT OR REDUCTION OF THE FLOW AND CIRCULATION OF WATER;**

(2) **WAS CONVERTED AND PRODUCED AN AGRICULTURAL COMMODITY AT LEAST ONCE BEFORE DECEMBER 23, 1985;**

(3) **WAS CAPABLE OF PRODUCING AN AGRICULTURAL COMMODITY AS OF DECEMBER 23, 1985;**

(4) **HAS NOT BEEN ABANDONED; AND**

(5) **IS INUNDATED LESS THAN 15 CONSECUTIVE DAYS DURING THE GROWING SEASON OR 10 PERCENT OF THE GROWING SEASON, WHICHEVER IS LESS, IN MOST YEARS.**



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(S) “PROGRAMMATIC GENERAL PERMIT” MEANS A GENERAL PERMIT ISSUED TO A COUNTY WITH AN EXISTING REGULATORY PROGRAM AS PROVIDED FOR IN §§ 5-503 AND 5-904 OF THIS TITLE.

**[G)] (T) (1) “Regulated activity” means any of the following activities in a nontidal wetland, [or] within a 25 foot buffer of the nontidal wetland, OR IN OTHER WATERS OF THE STATE:**

(i) The removal, excavation, or dredging of soil, sand, gravel, minerals, organic matter, or materials of any kind;

(ii) The changing of existing drainage characteristics, sedimentation patterns, flow patterns, or flood retention characteristics;

(iii) The disturbance of the water level or water table by drainage, impoundment, or other means;

(iv) The dumping, discharging of material, or filling with material, including the driving of piles and placing of obstructions;

(v) The grading or removal of material that would alter existing topography; and

(vi) The destruction or removal of plant life that would alter the character of a nontidal wetland.

(2) “Regulated activity” does not include:

**(I) an agricultural activity or forestry activity [as defined in this section] WHEN CONDUCTED WITHIN A 25 FOOT BUFFER OF A NONTIDAL WETLAND; OR**

**(II) ACTIVITIES CONDUCTED IN TIDAL WATERS OR TIDAL WETLANDS REGULATED UNDER TITLE 16 OF THIS ARTICLE.**

(U) “Service Area” means the geographic area within which impacts can be mitigated at a specific mitigation bank, as designated in its instrument.

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**[(k)] (v)** “Soil conservation and water quality plan” means a land use plan for a farm that shows a farmer how to make best possible use of soil and water resources while protecting and conserving those resources for the future.

5-902.

(a) The General Assembly finds that nontidal wetlands play important roles in the preservation and protection of the Chesapeake Bay and other waters of the State. Nontidal wetlands serve important roles through the reduction of pollutant loadings, including excess nutrients, sediment, and toxics, the attenuation of floodwaters and stormwaters, shoreline stabilization and erosion control, waterfowl breeding and habitat for many species of fish, game and nongame birds, and mammals, including rare and endangered species, food chain support, and timber production. Many nontidal wetlands have already been lost or degraded due to the combined effects of population growth and land use. Further degradation and losses of nontidal wetlands will contribute to the decline of the Chesapeake Bay and other waters of the State.

(b) It is the intent of the General Assembly to protect **[the] ALL** waters of the State through a comprehensive, statewide nontidal wetland program in cooperation with federal agencies, other states, and local government. The goal of the program shall be to attain no net overall loss in nontidal wetland acreage and function and to strive for a net resource gain in nontidal wetlands over present conditions.

**(C) (1) THE GENERAL ASSEMBLY RECOGNIZES THE IMPORTANCE OF FEDERAL EXPERTISE CONCERNING THE AQUATIC ENVIRONMENT AND ESPECIALLY FEDERAL TRUST RESPONSIBILITIES, INCLUDING THREATENED AND ENDANGERED SPECIES, MIGRATORY BIRDS, ANADROMOUS FISH, MARINE MAMMALS, AND FEDERAL LANDS, CONFERRED UPON FEDERAL AGENCIES, INCLUDING THE U. S. ENVIRONMENTAL PROTECTION AGENCY, U. S. FISH AND WILDLIFE SERVICE, NATIONAL MARINE FISHERIES SERVICE, AND THE U. S. ARMY CORPS OF ENGINEERS, AND ACKNOWLEDGES THE NECESSITY TO UTILIZE THEIR EXPERTISE AND GUIDANCE.**

**(2) THE DEPARTMENT SHALL FULLY CONSIDER THE SUBSTANTIVE, PROJECT-RELATED COMMENTS AND INFORMATION PROVIDED**

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BY THE FEDERAL RESOURCE AGENCIES, IN ACCORDANCE WITH 40 C.F.R. PART 233, AS AMENDED, WHEN DETERMINING WHETHER TO ISSUE, CONDITION, OR DENY A PERMIT. THE DEPARTMENT SHALL ATTEMPT TO RESOLVE ANY OUTSTANDING SUBSTANTIVE OBJECTIONS RAISED BY THE FEDERAL RESOURCE AGENCIES DURING THE PERMIT PROCESS AND MAY NOT ISSUE A PERMIT UNTIL ANY OBJECTIONS RAISED BY THE U. S. ENVIRONMENTAL PROTECTION AGENCY UNDER § 404 (J) OF THE CLEAN WATER ACT ARE RESOLVED.

(3) IN DEVELOPING AND IMPLEMENTING REGULATIONS AND POLICIES TO CARRY OUT THE PROVISIONS OF THIS SUBTITLE, THE DEPARTMENT SHALL USE ITS BEST EFFORTS TO CONSIDER AND APPLY RELEVANT REGULATIONS, POLICIES, AND GUIDANCE ISSUED FROM TIME TO TIME BY THE U. S. ARMY CORPS OF ENGINEERS AND THE U. S. ENVIRONMENTAL PROTECTION AGENCY AS THE DEPARTMENT MAY, IN ITS DISCRETION, DEEM PRACTICABLE AND APPROPRIATE, WHILE ALSO ENSURING THAT THE STATE PROGRAM REMAINS AT ALL TIMES CONSISTENT WITH THE FEDERAL CLEAN WATER ACT AND ITS IMPLEMENTING REGULATIONS.

[(c)] (D) It is the intent of the General Assembly that:

(1) Waters of the State be protected;

(2) Further degradation and losses of nontidal wetlands due to human activity be prevented wherever possible; [and]

(3) A REGULATED ACTIVITY MAY NOT BE PERMITTED IF THERE IS A PRACTICABLE ALTERNATIVE TO THE REGULATED ACTIVITY THAT WOULD HAVE LESS ADVERSE IMPACT ON THE AQUATIC ECOSYSTEM, AS LONG AS THE ALTERNATIVE DOES NOT HAVE OTHER SIGNIFICANT ADVERSE ENVIRONMENTAL CONSEQUENCES;

(4) A REGULATED ACTIVITY MAY NOT BE PERMITTED IF THE ANCHORAGE AND NAVIGATION OF ANY NAVIGABLE WATERS WOULD BE SUBSTANTIALLY IMPAIRED AS DETERMINED BY THE SECRETARY OF THE ARMY;

[(3)] (5) Where unavoidable losses or degradations occur as a result of permitted human activity, these losses or degradations be offset

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wherever practicable and feasible through the deliberate restoration or creation of nontidal wetlands[.];

**(6) PRIOR CONVERTED CROPLAND BE EXEMPT FROM REGULATION UNDER THIS SUBTITLE;**

**(7) THE DEPARTMENT SEEK DIRECT FEDERAL INVOLVEMENT IN CERTAIN PROJECTS BECAUSE FEDERAL PARTICIPATION IS ESSENTIAL TO A STRONG PARTNERSHIP FOR THE PROTECTION OF WATERS OF THE STATE, INCLUDING NONTIDAL WETLANDS; AND**

**(8) THE STATE TAKE ALL APPROPRIATE ACTION TO ASSUME THE FEDERAL PERMIT PROGRAM UNDER THE CLEAN WATER ACT, AS DEFINED IN 40 C.F.R. PART 233, AS AMENDED.**

5-903.

(a) There is a statewide program within the Department for the conservation, regulation, enhancement, creation, monitoring, and wise use of nontidal wetlands.

(b) The Department shall:

(1) Coordinate with other State agencies, federal agencies, other states, local governments, and interested persons in the regulation of nontidal wetlands;

(2) Assist local governments in undertaking nontidal wetland management planning, including mapping, technical assistance, and expediting the permit process;

(3) Develop certification programs to ensure uniform and professional standards for the identification, delineation, functional assessment, and mitigation of nontidal wetlands;

(4) Evaluate proposed activities on nontidal wetlands and grant or deny permits or other approvals of proposed activities;

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(5) Conduct watershed studies and educational programs and disseminate information concerning the nontidal wetlands program;

(6) Prepare, adopt, and periodically revise guidance maps of nontidal wetlands;

(7) Adopt standards for planning, regulating, restoring, creating, and enhancing nontidal wetlands;

(8) Purchase, restore, and create nontidal wetlands; and

(9) Conduct periodic monitoring, cumulative impact assessment, and evaluation of activities authorized under this subtitle.

(c) **[By December 31, 1989 the] THE** Department shall adopt **[final]** regulations necessary to administer this subtitle, **AND TO IMPLEMENT ASSUMPTION OF THE FEDERAL PERMIT PROGRAM UNDER THE CLEAN WATER ACT**, in accordance with § 10-111(a) of the State Government Article.

5-904.

(a) (1) The Department may **[delegate all or part of its authority under this subtitle] ISSUE A PROGRAMMATIC GENERAL PERMIT** to any county that enacts a nontidal wetland protection program **[by December 31, 1994 that meets at least the minimum standards adopted by the Department] THAT IS CONSISTENT WITH THE REQUIREMENTS OF THIS SUBTITLE.**

(2) **[(i) After December 31, 1994, the Department may delegate all or part of its authority under this subtitle to a county that applies to the Department to initiate a nontidal wetland protection program and meets at least the minimum standards adopted by the Department.**

**(ii)]** The Department shall establish a schedule for acceptance of applications from counties to initiate programs under this **[paragraph] SUBSECTION** that provides a limited period of time once every 2 years for counties to submit their applications to the Department.

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**(3) THE DEPARTMENT SHALL PROVIDE FOR PUBLIC NOTICE AND COMMENT IN ACCORDANCE WITH § 5-204 OF THIS TITLE PRIOR TO THE ISSUANCE OF A PROGRAMMATIC GENERAL PERMIT.**

**[(3)] (4) A [delegation] PROGRAMMATIC GENERAL PERMIT ISSUED in accordance with this subsection:**

- (i) May not be effective for more than [2] 5 years; and**
- (ii) May be renewed by the Department for additional [2-year] 5-YEAR periods.**

**[(4)] (5) After an opportunity for a hearing and upon a finding that the county program is not being administered in a manner consistent with the [standards adopted by the Department] REQUIREMENTS OF THIS SUBTITLE, the Department may [withdraw program delegation] REVOKE A PROGRAMMATIC GENERAL PERMIT ISSUED UNDER THIS SUBSECTION.**

**(b) Any regulated activity undertaken by a unit of State government shall comply with the provisions of this subtitle, including the provisions of this subtitle requiring the issuance of a [nontidal wetland] permit by the Department. The unit is not required to have local government approval.**

5-905.

**[(a) The following agricultural and forestry activities are exempt from the approval and mitigation requirements of this section:**

**(1) Agricultural activities undertaken in accordance with public drainage regulations;**

**(2) Agricultural and forestry activities, including the repair and maintenance of farm ponds, drainage ditches, channels, subsurface drains, causeways, bridges, or water control structures, provided that they do not drain, dredge, fill, or convert nontidal wetlands on which agricultural and forestry activities are not presently conducted;**

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(3) Agricultural and forestry activities on areas that have laid fallow as part of a conventional rotational cycle or due to a civil action involving ownership of the property;

(4) Agricultural and forestry activities on areas that had been set aside or taken out of production under a formal State or federal program;

(5) Forestry activities not requiring an erosion and sediment control plan;

(6) Construction or maintenance of forest roads and skid trails in accordance with best management practices; and

(7) Other activities exempted by the Department by regulation to maintain consistency with federal law.]

(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THE FOLLOWING TYPES OF ACTIVITIES SHALL BE EXEMPT FROM THE REQUIREMENT TO OBTAIN A PERMIT UNDER THIS SUBTITLE:

(1) REGULATED ACTIVITIES WITHIN PRIOR-CONVERTED CROPLAND;

(2) ONGOING AGRICULTURAL AND FORESTRY ACTIVITIES, SUCH AS REPAIR AND MAINTENANCE OF FARM PONDS, FARM ROADS, SKID TRAILS AND FOREST ROADS, FIREBREAKS, DRAINAGE DITCHES, CHANNELS, SUBSURFACE DRAINS, CAUSEWAYS, BRIDGES, OR WATER CONTROL STRUCTURES, PROVIDED THAT THEY DO NOT RESULT IN THE CONVERSION OF NONTIDAL WETLANDS OR OTHER WATERS OF THE STATE ON WHICH AGRICULTURAL AND FORESTRY ACTIVITIES ARE NOT PRESENTLY CONDUCTED;

(3) ONGOING AGRICULTURAL AND FORESTRY ACTIVITIES ON AREAS THAT HAVE LAIN FALLOW AS PART OF A CONVENTIONAL ROTATIONAL CYCLE OR DUE TO CIVIL ACTION INVOLVING OWNERSHIP OF THE PROPERTY, PROVIDED NO DRAINAGE OR HYDROLOGIC MODIFICATION IS REQUIRED TO RESUME THE AGRICULTURAL OR FORESTRY ACTIVITY;

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**(4) ONGOING AGRICULTURAL AND FORESTRY ACTIVITIES ON AREAS THAT HAVE BEEN SET ASIDE OR TAKEN OUT OF PRODUCTION UNDER A FORMAL STATE OR FEDERAL PROGRAM;**

**(5) RESUMPTION OF AGRICULTURAL AND FORESTRY ACTIVITIES ON AREAS THAT HAVE BEEN SET ASIDE OR TAKEN OUT OF PRODUCTION UNDER A FORMAL STATE OR FEDERAL PROGRAM PROVIDED THE AREA IS NOT ABANDONED FOR FIVE OR MORE YEARS AFTER THE FORMAL PROGRAM HAS EXPIRED.**

**(6) ONGOING FORESTRY ACTIVITIES NOT REQUIRING AN EROSION AND SEDIMENT CONTROL PLAN;**

**(7) CONNECTION OF UPLAND DRAINAGE FACILITIES TO NONTIDAL WETLANDS OR OTHER WATERS OF THE STATE ADEQUATE TO EFFECT THE REMOVAL OF EXCESS SOIL MOISTURE FROM UPLAND CROPLAND PROVIDED THAT THESE ACTIVITIES DO NOT DRAIN, DREDGE, OR CONVERT NONTIDAL WETLANDS OR OTHER WATERS OF THE STATE;**

**(8) CONSTRUCTION OF LIVESTOCK OR IRRIGATION PONDS PROVIDED THAT THESE ACTIVITIES DO NOT DRAIN, DREDGE, OR CONVERT NONTIDAL WETLANDS OR OTHER WATERS OF THE STATE; AND**

**(9) OTHER ACTIVITIES EXEMPTED BY THE DEPARTMENT BY REGULATION TO MAINTAIN CONSISTENCY WITH FEDERAL LAW.**

**[(b) (1) After December 31, 1990 agricultural activities conducted in nontidal wetlands that are not exempted under subsection (a) of this section require the soil conservation district to approve a soil conservation and water quality plan that contains best management practices to protect nontidal wetlands in compliance with regulations adopted by the Department in consultation with the Department of Agriculture.**

**(2) After December 31, 1990 forestry activities required to have an erosion and sediment control plan that are not exempted under subsection (a) of this section shall incorporate nontidal**



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wetlands best management practices in compliance with regulations under this subtitle.]

**(B) ANY DISCHARGE OF DREDGED OR FILL MATERIAL INTO WATERS OF THE STATE INCIDENTAL TO ANY ACTIVITY HAVING AS ITS PURPOSE BRINGING AN AREA OF THE WATERS OF THE STATE INTO A USE TO WHICH IT WAS NOT PREVIOUSLY SUBJECT, WHERE THE FLOW OR CIRCULATION OF WATERS OF THE STATE MAY BE IMPAIRED OR THE REACH OF SUCH WATERS BE REDUCED, SHALL BE REQUIRED TO HAVE A PERMIT.**

(c) [After December 31, 1990 if an agricultural activity that is not exempted under subsection (a) of this section results in a loss of nontidal wetlands, the Department shall require that a soil conservation and water quality plan include mitigation for the loss within 3 years. Mitigation may include creation or restoration of nontidal wetlands or monetary compensation. In determining the extent of mitigation, the Department shall consider the benefits provided by best management practices. If the State Department of Agriculture determines in writing that mitigation will create an economic hardship that would jeopardize the continued operation of the farm, mitigation may be deferred until:

- (1) The economic hardship no longer exists;
- (2) The current owner or operator transfers the farm to a new owner or operator, however, the current owner or operator is responsible for mitigation; or
- (3) Agricultural activities no longer take place on the nontidal wetland.

(d)] The soil conservation district [shall be responsible for delineating] MAY, AT THE DISCRETION OF THE DEPARTMENT, DELINEATE the extent of WATERS OF THE STATE, INCLUDING nontidal wetlands affected by agricultural or forestry activities.

5-906.

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**[(a) The following types of activities shall be exempt from the permit requirements of this section if notice is given to the Department and best management practices are implemented:**

**(1) Activities which normally occur in nontidal wetlands with minimal impact on nontidal wetlands, including the repair and maintenance of existing structures, utilities, including underground utilities, rights-of-way, and railroad beds; or**

**(2) Activities in isolated nontidal wetlands of less than 1 acre and having no significant plant or wildlife value.**

**(b) (1) After December 31, 1990 a]**

**(A) (1) A person may not conduct a regulated activity without first obtaining a permit from the Department.**

**(2) THE DEPARTMENT SHALL PRESCRIBE A TIME LIMIT NOT EXCEEDING 5 YEARS FROM THE GRANT OF THE PERMIT, DURING WHICH THE REGULATED ACTIVITY SHALL BE COMPLETED.**

**[(2)] (3) (I) In addition to obtaining a permit, a person shall comply with all other pollution control, flood hazard reduction, sediment control, stormwater management, local zoning, and other applicable federal, State, and local regulations.**

**(II) THE DEPARTMENT MAY SUSPEND PROCESSING OF AN APPLICATION IF THE APPLICATION IS INCONSISTENT WITH STATE, FEDERAL, OR LOCAL LAND USE REQUIREMENTS, INCLUDING AUTHORIZATIONS ISSUED BY THE U. S. CORPS OF ENGINEERS UNDER SECTION 404 OF THE CLEAN WATER ACT AND SECTION 10 OF THE RIVERS AND HARBORS ACT OF 1899, CRITICAL AREA, ZONING, SPECIAL EXCEPTION, VARIANCE, OR CONDITIONAL USE APPROVALS.**

**(III) THE DEPARTMENT WILL MAKE THESE CONSISTENCY DETERMINATIONS IN COOPERATION WITH THE APPROPRIATE STATE, FEDERAL, AND LOCAL REGULATORY AGENCIES.**

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| <b>UPPERCASE LANGUAGE</b> | <b>AMENDMENTS REQUIRING REVIEW BY EPA REGION III</b>                 |

**[(c)] (B)** To apply for a permit, the applicant shall submit a delineation of the affected **WATERS OF THE STATE, INCLUDING** nontidal wetlands, and all other information as required by the Department.

**[(d)] (C) [Within] EXCEPT AS OTHERWISE PROVIDED IN THE MEMORANDUM OF AGREEMENT BETWEEN THE U. S. ENVIRONMENTAL PROTECTION AGENCY AND THE DEPARTMENT CONCERNING ASSUMPTION OF THE FEDERAL PERMIT PROGRAM UNDER § 404 OF THE CLEAN WATER ACT, WITHIN** 45 days from receipt of the application, the Department shall notify the applicant whether the application is complete and the delineation is correct. If the Department fails to notify the applicant about the application or delineation within 45 days, the delineation shall be treated by the Department as correct and the application shall be treated as complete. The Department may request further information or provide for an extension of this deadline when extenuating circumstances prevent consideration of the application.

**[(e)] (D)** After receipt of a complete application, under the procedures of § 5-204(b) through (e) of this title the Department shall issue public notice of an opportunity to submit written comments or to request a hearing. A hearing shall be held within 45 days if requested, unless extenuating circumstances justify an extension of time. **[The] A hearing ON AN APPLICATION UNDER THIS SUBTITLE** is not a contested case under the State Government Article.

**(E) (1) AFTER RECEIPT OF A COMPLETE APPLICATION, THE DEPARTMENT SHALL NOTIFY ANY STATE WHOSE WATERS MAY BE AFFECTED BY THE ISSUANCE OF A PERMIT, AND SHALL CONSIDER WRITTEN RECOMMENDATIONS FROM ANY SUCH STATE WITH RESPECT TO THE PERMIT APPLICATION.**

**(2) THE DEPARTMENT SHALL NOTIFY THE U. S. ENVIRONMENTAL PROTECTION AGENCY AND THE AFFECTED STATE IN WRITING IF THE DEPARTMENT DOES NOT ACCEPT SUCH RECOMMENDATIONS AND INCLUDE AN EXPLANATION FOR ITS DECISION.**

**(f)** In granting a permit, the Department may impose conditions or limitations required to carry out the provisions of this subtitle **AND TO ASSURE COMPLIANCE WITH THE REQUIREMENTS OF THE FEDERAL PERMIT PROGRAM**

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**UNDER SECTION 404 OF THE CLEAN WATER ACT, INCLUDING THE ENVIRONMENTAL CRITERIA ESTABLISHED UNDER SECTION 404(B)(1) OF THE CLEAN WATER ACT (40 C.F.R. PART 230).**

(g) The Department may require a bond or other instrument to secure compliance with the conditions in the permit.

(h) The Department may issue a temporary emergency permit for a regulated activity if:

(1) An unacceptable threat to life or severe loss of property will occur if an emergency permit is not granted; and

(2) The anticipated threat or loss may occur before a permit can be issued or modified as provided under this subtitle.

(i) (1) THE DEPARTMENT MAY ISSUE GENERAL PERMITS.

(2) PRIOR TO THE PROMULGATION AND ADOPTION OF A GENERAL PERMIT PURSUANT TO AN ASSUMED FEDERAL PERMIT PROGRAM UNDER SECTION 404 OF THE CLEAN WATER ACT, THE U. S. ENVIRONMENTAL PROTECTION AGENCY SHALL REVIEW AND APPROVED THE GENERAL PERMIT IN ACCORDANCE WITH THE MEMORANDUM OF AGREEMENT BETWEEN THE U. S. ENVIRONMENTAL PROTECTION AGENCY AND THE DEPARTMENT CONCERNING ASSUMPTION OF THE FEDERAL PERMIT PROGRAM.

(3) GENERAL PERMITS MAY REQUIRE:

(i) SUBMISSION OF AN APPLICATION FOR INDIVIDUAL APPROVALS;

(ii) APPROVAL OF A SOIL CONSERVATION AND WATER QUALITY PLAN;

(iii) APPROVAL OF AN EROSION AND SEDIMENT CONTROL PLAN;

(iv) BEST MANAGEMENT PRACTICES;

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(V) MONITORING PROVISIONS AND REPORTING REQUIREMENTS;

(VI) MITIGATION OF IMPACTS TO WATERS OF THE STATE, INCLUDING NONTIDAL WETLANDS;

(VII) ISSUANCE OF A LETTER OF AUTHORIZATION; AND

(VIII) ADDITIONAL CONDITIONS CONSIDERED APPROPRIATE BY THE DEPARTMENT.

(4) THE DEPARTMENT SHALL PROVIDE FOR PUBLIC NOTICE AND COMMENT IN ACCORDANCE WITH § 5-204 OF THIS TITLE PRIOR TO THE ISSUANCE OF A GENERAL PERMIT.

(5) THE DEPARTMENT MAY SUSPEND, MODIFY, OR REVOKE A GENERAL PERMIT, OR REQUIRE A PERSON TO OBTAIN AN INDIVIDUAL PERMIT UNDER THIS SECTION, IF THE DEPARTMENT DETERMINES THAT A GENERAL PERMIT DOES NOT COMPLY WITH THE PROVISIONS OF THIS SUBTITLE.

(J) GENERAL PERMITS MAY INCLUDE THE FOLLOWING ACTIVITIES IN WATERS OF THE STATE, INCLUDING NONTIDAL WETLANDS:

(1) MINOR CONSTRUCTION ACTIVITIES, INCLUDING REPAIR AND MAINTENANCE OF EXISTING STRUCTURES, UTILITIES, INCLUDING UNDERGROUND UTILITIES, RIGHTS-OF-WAY, AND RAILROAD BEDS;

(2) ACTIVITIES IN ISOLATED NONTIDAL WETLANDS OF LESS THAN 1 ACRE AND HAVING NO SIGNIFICANT PLANT OR WILDLIFE VALUE;

(3) THE FOLLOWING AGRICULTURAL AND FORESTRY ACTIVITIES IF THE APPROPRIATE CRITERIA LISTED IN SUBSECTION (K) (1) THROUGH (4) OF THIS SECTION ARE SATISFIED:

(I) ACTIVITIES UNDERTAKEN IN ACCORDANCE WITH PUBLIC DRAINAGE REGULATIONS;

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(II) AGRICULTURAL AND FORESTRY ACTIVITIES THAT ARE NOT EXEMPT UNDER § 5-905 OF THIS SUBTITLE; AND

(III) CONSTRUCTION OF FORESTRY ROADS AND SKID TRAILS IN ACCORDANCE WITH BEST MANAGEMENT PRACTICES.

(4) OTHER ACTIVITIES DEEMED APPROPRIATE BY THE DEPARTMENT.

(K) THE FOLLOWING CRITERIA APPLY TO A GENERAL PERMIT ISSUED FOR AGRICULTURAL AND FORESTRY ACTIVITIES LISTED IN SUBSECTION (J) OF THIS SECTION:

(1) A PERSON CONDUCTING AN AGRICULTURAL OR FORESTRY ACTIVITY SHALL OBTAIN A NONTIDAL WETLAND AND WATERWAY DELINEATION IN ACCORDANCE WITH § 5-905(C) OF THIS SUBTITLE.

(2) A PERSON CONDUCTING AN AGRICULTURAL ACTIVITY IN WATERS OF THE STATE, INCLUDING NONTIDAL WETLANDS SHALL OBTAIN AND IMPLEMENT THAT PORTION OF A SOIL CONSERVATION AND WATER QUALITY PLAN, DEVELOPED WITH AND APPROVED BY THE SOIL CONSERVATION DISTRICT, THAT CONTAINS BEST MANAGEMENT PRACTICES TO PROTECT WATERS OF THE STATE IN COMPLIANCE WITH REGULATIONS ADOPTED BY THE DEPARTMENT, INCLUDING AVOIDANCE AND MINIMIZATION OF IMPACTS TO WATERS OF THE STATE.

(3) (I) IF AN AGRICULTURAL ACTIVITY RESULTS IN A LOSS OF WATERS OF THE STATE, INCLUDING NONTIDAL WETLANDS, A PERSON CONDUCTING AN AGRICULTURAL ACTIVITY SHALL MITIGATE FOR THE LOSS.

(II) IN DETERMINING THE EXTENT OF MITIGATION, THE DEPARTMENT SHALL CONSIDER THE BENEFITS PROVIDED BY BEST MANAGEMENT PRACTICES.

(4) A PERSON CONDUCTING A FORESTRY ACTIVITY IN WATERS OF THE STATE, INCLUDING NONTIDAL WETLANDS SHALL DEVELOP AND IMPLEMENT AN EROSION AND SEDIMENT CONTROL PLAN, APPROVED BY THE SOIL CONSERVATION DISTRICT, THAT CONTAINS BEST MANAGEMENT

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PRACTICES TO PROTECT WATERS OF THE STATE IN COMPLIANCE WITH REGULATIONS ADOPTED BY THE DEPARTMENT.

**[(i) (1) By December 31, 1989 the] (L) (1) THE** Department shall designate by regulation nontidal wetlands for which the buffer is to be expanded beyond 25 feet, but the total buffer may not exceed 100 feet, to assure adequate protections from adjacent activities or conditions which may adversely affect the nontidal wetland and associated aquatic ecosystem.

(2) Activities or conditions where the buffer may be expanded beyond 25 feet include the presence of slopes, highly erodible soils or other soils with development constraints, or the presence of nontidal wetlands of special State concern.

**(M) [The] EXCEPT AS OTHERWISE PROVIDED IN THE MEMORANDUM OF AGREEMENT BETWEEN THE U. S. ENVIRONMENTAL PROTECTION AGENCY AND THE DEPARTMENT CONCERNING ASSUMPTION OF THE FEDERAL PERMIT PROGRAM UNDER § 404 OF THE CLEAN WATER ACT, THE** Department shall grant, deny, or condition a permit within **[45 days of a public hearing] 30 CALENDAR DAYS AFTER THE CLOSE OF THE PUBLIC INFORMATIONAL HEARING RECORD** or within 60 days of the receipt of a completed application if no hearing is held. After notifying the applicant, the Department may extend its action beyond these time periods for an additional 30 days for extenuating circumstances.

**(N) THE DEPARTMENT MAY REQUIRE AS A CONDITION OF ANY PERMIT THAT THE PERMITTEE ESTABLISH AND MAINTAIN RECORDS, MAKE REPORTS, INSTALL, USE, OR MAINTAIN MONITORING EQUIPMENT, CONDUCT SAMPLING, OR PROVIDE SUCH OTHER INFORMATION REGARDING THE REGULATED ACTIVITY OR DISCHARGE AS DEEMED NECESSARY TO SAFEGUARD THE AQUATIC ENVIRONMENT.**

5-907.

(a) The Department may not issue a **[nontidal wetland]** permit for a regulated activity **IN WATERS OF THE STATE, INCLUDING NONTIDAL WETLANDS,** unless the Department finds that the applicant has demonstrated that the regulated activity:

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(1) [(i) Is water dependent and requires access to the nontidal wetland as a central element of its basic function; or

(ii) Is not water dependent and has] HAS no practicable alternative;

(2) Will AVOID OR minimize alteration or impairment of [the nontidal wetland, including] WATERS OF THE STATE, INCLUDING NONTIDAL WETLANDS, CONSIDERING existing topography, vegetation, fish and wildlife resources, and hydrological conditions;

(3) Will not VIOLATE ANY APPLICABLE WATER QUALITY STANDARDS OR cause or contribute to a SIGNIFICANT degradation of groundwaters or surface waters AS DETERMINED BY THE DEPARTMENT; [and]

(4) Is consistent with any comprehensive management plan that may be developed in accordance with § 5-908 of this subtitle;

(5) WILL NOT JEOPARDIZE THE CONTINUED EXISTENCE OF SPECIES LISTED PURSUANT TO TITLE 4, SUBTITLE 2A OR TITLE 10, SUBTITLE 2A OF THE NATURAL RESOURCES ARTICLE OR WHICH APPEAR ON THE FEDERAL THREATENED AND ENDANGERED SPECIES LIST (50 CFR 17.11 AND 17.12), AND WILL NOT RESULT IN THE LIKELIHOOD OF THE DESTRUCTION OR ADVERSE MODIFICATION OF A HABITAT WHICH IS DETERMINED BY THE SECRETARY OF THE UNITED STATES DEPARTMENT OF THE INTERIOR OR THE SECRETARY OF THE UNITED STATES DEPARTMENT OF COMMERCE AS APPROPRIATE TO BE A CRITICAL HABITAT UNDER THE ENDANGERED SPECIES ACT OF 1973, 16 U.S.C. § 1531 ET SEQ.;

(6) (1) WILL NOT BE CONTRARY TO THE PUBLIC INTEREST.

(2) THE FACTORS TO BE CONSIDERED IN THIS PUBLIC INTEREST REVIEW INCLUDE CONSERVATION, ECONOMICS, AESTHETICS, GENERAL ENVIRONMENTAL CONCERNS, WETLANDS, HISTORIC PROPERTIES, FISH AND WILDLIFE VALUES, FLOOD HAZARDS, FLOODPLAIN VALUES, LAND USE, NAVIGATION, SHORE EROSION AND ACCRETION, RECREATION, WATER SUPPLY AND CONSERVATION, WATER QUALITY, ENERGY NEEDS, SAFETY, FOOD



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AND FIBER PRODUCTION, MINERAL NEEDS, CONSIDERATION OF PROPERTY OWNERSHIP AND, IN GENERAL, THE NEEDS AND WELFARE OF THE PEOPLE[.]; AND

**(7) WILL BE CONSISTENT WITH THE ENVIRONMENTAL CRITERIA ESTABLISHED UNDER SECTION 404(B)(1) OF THE CLEAN WATER ACT (40 C.F.R. PART 230).**

**(B) THE DEPARTMENT MAY NOT ISSUE A PERMIT IF, IN THE JUDGMENT OF THE U. S. ARMY CORPS OF ENGINEERS, AFTER CONSULTATION WITH THE U. S. COAST GUARD, ANCHORAGE AND NAVIGATION OF NAVIGABLE WATERS WOULD BE SUBSTANTIALLY IMPAIRED.**

**[(b)] (C) (1)** The applicant shall demonstrate to the satisfaction of the Department that practicable alternatives have been analyzed and that the regulated activity has no practicable alternative.

**(2)** In evaluating whether the proposed regulated activity has a practicable alternative, the Department shall consider:

**[(1)] (I)** Whether the basic project purpose cannot be reasonably accomplished utilizing one or more other sites in the same general area that would avoid or result in less adverse impact on **WATERS OF THE STATE, INCLUDING** nontidal wetlands;

**[(2)] (II)** Whether a reduction in the size, scope, configuration, or density of the project as proposed and all alternative designs that would result in less adverse impact on **[the nontidal wetland] WATERS OF THE STATE, INCLUDING NONTIDAL WETLANDS,** would not accomplish the basic purpose of the project; **AND**

**[(3)] (III)** In cases where the applicant has rejected alternatives to the project as proposed due to constraints such as inadequate zoning, infrastructure, or parcel size, whether the applicant has made reasonable attempts to remove or accommodate these constraints[; and

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(4) The economic value of the proposed regulated activity in meeting a demonstrated public need in the area and the ecological and economic value associated with the nontidal wetland].

**(D) FOR NON-WATER DEPENDENT ACTIVITIES, PRACTICABLE ALTERNATIVES ARE PRESUMED TO BE AVAILABLE UNLESS CLEARLY DEMONSTRATED OTHERWISE.**

5-908.

In cooperation with other State, local, and federal agencies, the Department may prepare comprehensive watershed management plans which address nontidal wetland protection, creation, and restoration, cumulative impacts, flood protection, and water supply concerns. Completed watershed management plans will be used as the basis for consistent permitting decisions and creating and restoring nontidal wetlands.

5-909.

(a) An applicant shall take all necessary steps to first avoid significant impairment and then minimize losses of nontidal wetlands **AND OTHER WATERS OF THE STATE**. If the applicant demonstrates to the Department's satisfaction that all necessary steps were taken and losses or significant impairment of nontidal wetlands **AND OTHER WATERS OF THE STATE** are unavoidable, the Department shall require the applicant to adopt mitigation practices.

(b) (1) **[By December 31, 1989 the] THE** Department, consistent with the goals established in § 5-902 of this subtitle, shall adopt by regulation standards and procedures for the mitigation of nontidal wetlands losses, including practices for nontidal wetland creation, restoration, enhancement, or monetary compensation.

(2) (I) The Department may accept monetary compensation only if it is determined that:

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1. The creation, restoration, or enhancement of nontidal wetlands on-site are not [feasible alternatives] environmentally preferable alternatives; and

2. THE REQUIRED MITIGATION CANNOT BE ACCOMPLISHED IN A MITIGATION BANK APPROVED BY THE DEPARTMENT.

(II) Monetary compensation may not be a substitute for the requirement to avoid and minimize nontidal wetland losses.

(c) (1) There is a Nontidal [Wetland] WETLANDS AND WATERWAYS Compensation Fund in the Department.

(2) The following money shall be deposited in the Fund:

(i) Any monetary compensation paid by an applicant instead of engaging in the creation, restoration, or enhancement of a nontidal wetland; [and]

(II) ANY MONETARY COMPENSATION PAID BY AN APPLICANT TO OFFSET WATERWAY IMPACTS AUTHORIZED UNDER § 5-503 OF THIS TITLE.

[(ii)] (III) Any ADMINISTRATIVE PENALTY ASSESSED BY THE DEPARTMENT OR civil or criminal penalty imposed by a court in accordance with § 5-911 of this subtitle.

(3) Funds in the Nontidal [Wetland] WETLANDS AND WATERWAYS Compensation Fund may be used only for the creation, restoration, or enhancement of nontidal wetlands OR WATERWAYS, including:

- (i) Acquisition of land;
- (ii) Acquisition of easements;
- (iii) Maintenance of mitigation sites;
- (iv) Purchase of credits in mitigation banks; and

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(v) Contractual services necessary to accomplish the intent of this paragraph.

(4) Funds credited and any interest accrued to the Fund:

(i) Shall remain available until expended; and

(ii) May not be reverted to the General Fund under any other provision of law.

(5) At the end of the fiscal year, the Department shall prepare an annual report on the Nontidal **[Wetland]** **WETLANDS AND WATERWAYS** Compensation Fund that includes an accounting of all financial receipts and expenditures to and from the Fund and shall provide a copy of the report to the General Assembly, as provided under § 2-1246 of the State Government Article.

5-910.

(a) The General Assembly declares that:

(1) In the application review process, one of the primary mitigation issues is locating the most beneficial area to conduct wetland **OR** **WATERWAY** restoration, creation, or enhancement;

(2) Where unavoidable losses or degradations occur as a result of permitted human activity, there exists a sequential process for mitigation site location which includes consideration of on-site alternatives where it may be environmentally preferable;

(3) Mitigation banking, which allows a person to restore, enhance, or create a functional **[wetland]** **AQUATIC** ecosystem, may offer a sound mitigation alternative and may provide an opportunity to contribute to the goal of no net loss in wetlands acreage and function; and

(4) Mitigation banking may not alter the regulatory requirements of § 5-503 **OR** § 5-907 of this **[subtitle]** **TITLE**.

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(b) The Department shall develop standards and adopt regulations for the creation of wetland AND WATERWAY mitigation banks, including:

(1) The types and locations of **[wetlands]** AQUATIC RESOURCES to be restored, created, or enhanced and the types and locations of **[wetlands to be filled]** AQUATIC RESOURCES TO BE IMPACTED for which a person may obtain credit through a mitigation bank;

(2) The types and number of credits available through the bank to offset losses by **[acreage]** AREA and by function of **[a wetland to be filled]** AN AQUATIC RESOURCE TO BE IMPACTED;

(3) The method of wetland OR WATERWAY construction, supervision, and maintenance to be required of a bank owner seeking to obtain credit for use of the bank;

(4) Maintenance requirements;

(5) Monitoring requirements;

(6) Bonding requirements, to include assurance of wetland AND WATERWAY function;

(7) Reporting requirements to the Department;

(8) Consistency with developed watershed plans, forest conservation, local growth management policies, and local comprehensive plans;

(9) Requirements for the protection in perpetuity of mitigation banks, through methods that include easements, covenants, or similar mechanisms, that shall be in place at the time credits are withdrawn; AND

(10) Public notice and comment requirements, including opportunity for public review and comment on any specific wetland OR WATERWAY bank.

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(c) The standards and regulations adopted by the Department under this section shall ensure that:

(1) The provisions of § 5-503 AND § 5-907 of this [subtitle] TITLE, including the avoidance, alternative analysis, and minimization of disturbance of nontidal wetlands AND WATERWAYS, are fully adhered to;

(2) The goals of § 5-902 of this subtitle to attain no net overall loss in nontidal wetland acreage and function and to strive for a net resource gain are achieved;

(3) The potential for on-site mitigation is considered whenever it may be environmentally preferable;

(4) Mitigation through a mitigation bank shall be accomplished in service areas:

(i) Determined by the Department in coordination with an interagency review team; and

(ii) That are consistent with federal guidelines; and

(5) For purposes of item (4) of this subsection, a service area:

(i) Is the same 8 digit hydrologic unit code watershed in which the mitigation bank is located; and

(ii) May be expanded to include other 8 digit hydrologic unit code watersheds if environmentally justified.

(d) (1) This section may not be construed to require the Department to:

(i) Establish or fund State mitigation banks;

(ii) Fund the establishment of mitigation banking by the private sector; or

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(iii) Use State lands for mitigation banking.

(2) The Department may establish mitigation banking through and with the cooperation of the private sector and may use State lands for mitigation banking sites.

5-911.

(a) (1) The enforcement provisions in this section are in addition to any other applicable provisions in this title.

(2) (I) In addition to the enforcement authority granted the Department, the enforcement provisions of this section may be exercised by any county **[that has program delegation authority] UNDER THE PROVISIONS OF A PROGRAMMATIC GENERAL PERMIT.**

(II) IN INSTANCES WHERE THE DEPARTMENT DETERMINES THAT A COUNTY HAS NOT INITIATED TIMELY AND APPROPRIATE ENFORCEMENT ACTION REGARDING A STATE PROGRAMMATIC GENERAL PERMIT VIOLATION OR AN UNAUTHORIZED REGULATED ACTIVITY, THE DEPARTMENT MAY PROCEED WITH ANY OR ALL OF THE ENFORCEMENT OPTIONS AVAILABLE UNDER THIS SECTION.

(b) The Department may revoke, **SUSPEND, OR MODIFY** a permit for cause, including violation of permit conditions, obtaining a permit by misrepresentation, failing to disclose a relevant or material fact, or change in conditions. The Department shall notify the violator in writing and provide an opportunity for a **CONTESTED CASE** hearing.

(c) (1) **THE DEPARTMENT SHALL HAVE A RIGHT OF ENTRY, UPON PRESENTATION OF PROPER IDENTIFICATION DURING REASONABLE BUSINESS HOURS, TO THE SITE OF A REGULATED ACTIVITY AND PREMISES IN WHICH A DISCHARGE SOURCE IS, OR MIGHT BE LOCATED, OR IN WHICH MONITORING EQUIPMENT OR RECORDS REQUIRED BY A PERMIT ARE KEPT, FOR PURPOSES OF INSPECTION, SAMPLING, COPYING, OR PHOTOGRAPHING.**

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**(2) NOTHING IN THIS SECTION MAY BE CONSTRUED AS OVERRIDING ANY APPLICABLE WARRANT REQUIREMENTS OR OTHER CONSTITUTIONAL SAFEGUARDS.**

**(D) THE DEPARTMENT MAY REQUIRE THE OWNER OR OPERATOR OF A SITE OF A REGULATED ACTIVITY AND PREMISES IN WHICH A DISCHARGE SOURCE IS, OR MIGHT BE LOCATED, TO ESTABLISH AND MAINTAIN RECORDS, MAKE REPORTS, INSTALL, USE, OR MAINTAIN MONITORING EQUIPMENT, CONDUCT SAMPLING, OR PROVIDE OTHER INFORMATION REGARDING THE REGULATED ACTIVITY OR DISCHARGE.**

**[(c)] (E) (1) The Department may issue a stop work order against any person who violates any provision of this subtitle or any regulation, order, or permit under this subtitle [related to a regulated activity] AND ORDER IMMEDIATE RESTORATION OF OR MITIGATION FOR THE UNLAWFUL DISTURBANCE.**

**(2) THE DEPARTMENT SHALL NOTIFY THE VIOLATOR IN WRITING AND PROVIDE AN OPPORTUNITY FOR A CONTESTED CASE HEARING.**

**[(d) (1)] (F) A person who violates any provision of this subtitle or any regulation, order, or permit under this subtitle is liable for a penalty not exceeding \$10,000 FOR EACH DAY OF VIOLATION, which may be recovered in a civil action brought by the Department. Each day a violation continues is a separate violation under this subsection. PROOF BY THE DEPARTMENT THAT CONDITIONS RESULTING FROM A VIOLATION EXISTED ON SEPARATE, SUBSEQUENT DAYS SHALL BE SUFFICIENT TO ESTABLISH THAT THE VIOLATION CONTINUED ON ALL INTERVENING DAYS.**

**[(2) The court may issue an injunction requiring the person to cease the violation and restore the area unlawfully disturbed.]**

**[(e)] (G) (1) A person who violates any provision of or fails to perform any duty imposed by this subtitle or by a regulation, order, or permit under this subtitle is guilty of a misdemeanor and on conviction is subject to:**



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| Stricken language         | Existing statutory language repealed by this legislation             |
| <b>UPPERCASE LANGUAGE</b> | <b>AMENDMENTS PREVIOUSLY REVIEWED BY EPA REGION III</b>              |
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(i) For a first offense, a fine not exceeding \$10,000 **FOR EACH DAY OF VIOLATION**; or

(ii) For a second or subsequent offense, a fine not exceeding \$25,000 **FOR EACH DAY OF VIOLATION**.

(2) The court may order the person to restore, **MITIGATE, OR BOTH FOR** the area unlawfully disturbed.

(3) **EACH DAY A VIOLATION OCCURS IS A SEPARATE VIOLATION UNDER THIS SUBSECTION.**

(H) A PERSON WHO KNOWINGLY MAKES A FALSE STATEMENT, REPRESENTATION, OR CERTIFICATION IN ANY APPLICATION, RECORD, REPORT, PLAN, OR OTHER DOCUMENT FILED OR REQUIRED TO BE MAINTAINED UNDER THIS SUBTITLE, OR ANY REGULATION ADOPTED THEREUNDER, OR WHO FALSIFIES, TAMPERS WITH, OR KNOWINGLY RENDERS INACCURATE ANY MONITORING DEVICE OR METHOD REQUIRED TO BE MAINTAINED UNDER THE PERMIT IS GUILTY OF A MISDEMEANOR AND, ON CONVICTION, IS SUBJECT TO A FINE OF AT LEAST \$5,000 FOR EACH VIOLATION.

(I) THE DEPARTMENT MAY SEEK AN INJUNCTION AGAINST ANY PERSON WHO VIOLATES OR THREATENS TO VIOLATE ANY PROVISION OF THIS SUBTITLE OR OF ANY PROVISION OF A REGULATION, PLAN, OR PERMIT ADOPTED, APPROVED, OR ISSUED UNDER THIS SUBTITLE, AND REQUIRE THE PERSON TO CEASE THE VIOLATION AND RESTORE,~~[OR]~~ MITIGATE, OR BOTH FOR THE AREA UNLAWFULLY DISTURBED.

(J) (1) THE DEPARTMENT MAY ISSUE A WRITTEN COMPLAINT IF THE DEPARTMENT HAS REASONABLE GROUNDS TO BELIEVE THAT THE PERSON TO WHOM THE COMPLAINT IS DIRECTED HAS VIOLATED THIS SUBTITLE OR ANY RULE, REGULATION, ORDER, OR PERMIT ISSUED UNDER THIS SUBTITLE.

(2) AFTER OR CONCURRENTLY WITH THE SERVICE OF A COMPLAINT UNDER THIS SUBTITLE, THE DEPARTMENT MAY:

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**(I) ISSUE AN ORDER THAT REQUIRES THE PERSON TO WHOM THE ORDER IS DIRECTED TO TAKE CORRECTIVE ACTION WITHIN A TIME SET IN THE ORDER;**

**(II) SEND A WRITTEN NOTICE THAT REQUIRES THE PERSON TO WHOM THE NOTICE IS DIRECTED TO FILE A WRITTEN REPORT ABOUT THE ALLEGED VIOLATION; OR**

**(III) SEND A WRITTEN NOTICE THAT REQUIRES THE PERSON TO WHOM THE NOTICE IS DIRECTED:**

**1. TO APPEAR AT A HEARING BEFORE THE DEPARTMENT AT A TIME AND PLACE THE DEPARTMENT SETS TO ANSWER THE CHARGES IN THE COMPLAINT; OR**

**2. TO FILE A WRITTEN REPORT AND ALSO APPEAR AT A HEARING BEFORE THE DEPARTMENT AT A TIME AND PLACE THE DEPARTMENT SETS TO ANSWER THE CHARGES IN THE COMPLAINT.**

**(3) ANY ORDER ISSUED UNDER THIS SECTION IS EFFECTIVE IMMEDIATELY, ACCORDING TO ITS TERMS, WHEN IT IS SERVED.**

**(4) ANY PERSON NAMED IN A COMPLAINT OR ORDER ISSUED UNDER THIS SUBSECTION MAY REQUEST A HEARING BEFORE THE DEPARTMENT.**

**(K) (1) IN ADDITION TO ANY OTHER REMEDIES AVAILABLE AT LAW OR IN EQUITY AND AFTER AN OPPORTUNITY FOR A CONTESTED CASE HEARING, WHICH MAY BE WAIVED BY THE PERSON ACCUSED OF THE VIOLATION, THE DEPARTMENT MAY IMPOSE AN ADMINISTRATIVE PENALTY ON ANY PERSON WHO VIOLATES ANY PROVISION OF THIS SUBTITLE OR ANY REGULATION, PLAN, OR PERMIT ADOPTED, APPROVED, OR ISSUED UNDER THIS SUBTITLE.**

**(2) THE PENALTY IMPOSED ON A PERSON UNDER THIS SUBSECTION SHALL BE:**

**(I) UP TO \$10,000 FOR EACH DAY OF EACH VIOLATION, WITH THE MAXIMUM AMOUNT OF THE PENALTY NOT TO EXCEED \$125,000; AND**

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**(II) ASSESSED WITH CONSIDERATION GIVEN TO:**

**1. THE NATURE, CIRCUMSTANCE, GRAVITY, AND WILLFULNESS OF THE VIOLATION, THE EXTENT TO WHICH THE EXISTENCE OF THE VIOLATION WAS KNOWN TO BUT UNCORRECTED BY THE VIOLATOR, AND THE EXTENT TO WHICH THE VIOLATOR EXERCISED REASONABLE CARE;**

**2. ANY ACTUAL HARM TO THE ENVIRONMENT OR TO HUMAN HEALTH, INCLUDING INJURY TO OR IMPAIRMENT OF THE USE OF THE WATERS OF THE STATE OR THE NATURAL RESOURCES OF THE STATE;**

**3. THE COST OF RESTORATION, MITIGATION, OR BOTH FOR THE NATURAL RESOURCES;**

**4. THE NATURE AND DEGREE OF INJURY TO OR INTERFERENCE WITH GENERAL WELFARE, HEALTH, AND PROPERTY;**

**5. THE EXTENT TO WHICH THE LOCATION OF THE VIOLATION, INCLUDING LOCATION NEAR WATERS OF THE STATE OR AREAS OF HUMAN POPULATION CREATES THE POTENTIAL FOR HARM TO THE ENVIRONMENT OR TO HUMAN HEALTH OR SAFETY;**

**6. THE AVAILABLE TECHNOLOGY AND ECONOMIC REASONABLENESS OF CONTROLLING, REDUCING, OR ELIMINATING THE VIOLATION;**

**7. THE DEGREE OF HAZARD POSED BY THE UNLAWFUL ACTIVITY;**

**8. THE EXTENT TO WHICH THE CURRENT VIOLATION IS PART OF A RECURRENT PATTERN OF THE SAME OR SIMILAR TYPE OF VIOLATION COMMITTED BY THE VIOLATOR;**

**9. WHETHER OR NOT PENALTIES WERE ASSESSED OR WILL BE ASSESSED UNDER OTHER PROVISIONS OF THIS SUBTITLE; AND**

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**10. THE DEGREE OF CULPABILITY, ECONOMIC BENEFIT OR SAVINGS, IF ANY, RESULTING FROM THE VIOLATION AND SUCH OTHER MATTERS AS JUSTICE MAY REQUIRE.**

**(3) EACH DAY A VIOLATION CONTINUES IS A SEPARATE VIOLATION UNDER THIS SUBSECTION. PROOF BY THE DEPARTMENT THAT CONDITIONS RESULTING FROM A VIOLATION EXISTED ON SEPARATE, SUBSEQUENT DAYS SHALL BE SUFFICIENT TO ESTABLISH THAT THE VIOLATION CONTINUED ON ALL INTERVENING DAYS.**

**(4) ANY PENALTY IMPOSED UNDER THIS SUBSECTION IS PAYABLE TO THE STATE AND COLLECTIBLE IN ANY MANNER PROVIDED AT LAW FOR THE COLLECTION OF PENALTIES.**

**(5) ANY PENALTY COLLECTED UNDER THIS SUBSECTION OR FOR A VIOLATION OF § 5-503 OF THIS TITLE SHALL BE PLACED IN THE SPECIAL FUND UNDER § 5-909 (C) OF THIS SUBTITLE.**

**(L) (1) THE DEPARTMENT SHALL GIVE NOTICE AND HOLD ANY HEARING UNDER THIS SECTION IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT.**

**(2) ANY REQUEST FOR A HEARING ON A STOP WORK ORDER ISSUED UNDER SUBSECTION (E) OF THIS SECTION, A COMPLAINT OR ORDER ISSUED UNDER SUBSECTION (J) OF THIS SECTION, OR A PENALTY IMPOSED UNDER SUBSECTION (K) OF THIS SECTION SHALL BE MADE IN WRITING NO LATER THAN 14 WORKING DAYS AFTER THE STOP WORK ORDER, COMPLAINT OR ORDER, OR NOTICE OF PENALTY IS SERVED, IN WHICH CASE A HEARING SHALL BE SCHEDULED WITHIN 10 DAYS FROM THE RECEIPT OF THE REQUEST.**

**(3) IF A REQUEST FOR A HEARING ON A STOP WORK ORDER ISSUED UNDER SUBSECTION (E) OF THIS SECTION IS MADE, THE DEPARTMENT SHALL:**

**(I) HOLD THE HEARING NO LATER THAN 10 WORKING DAYS AFTER RECEIVING THE REQUEST; AND**

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**(II) RENDER A DECISION WITHIN 10 WORKING DAYS AFTER THE HEARING.**

**(4) THE FILING OF A HEARING REQUEST DOES NOT OPERATE AS A STAY ON ANY NOTICE OR ORDER, OR OTHER ACTION FOR WHICH REVIEW IS REQUESTED.**

**(5) THE DEPARTMENT MAY MAKE A VERBATIM RECORD OF THE PROCEEDINGS OF ANY HEARING HELD UNDER THIS SUBTITLE.**

**(6) (I) IN CONNECTION WITH ANY HEARING UNDER THIS SUBTITLE, THE DEPARTMENT MAY:**

- 1. SUBPOENA ANY PERSON OR EVIDENCE; AND**
- 2. ORDER A WITNESS TO GIVE EVIDENCE.**

**(II) A SUBPOENAED WITNESS SHALL RECEIVE THE SAME FEES AND MILEAGE REIMBURSEMENT AS IF THE HEARING WERE PART OF A CIVIL ACTION.**

**(III) IF A PERSON FAILS TO COMPLY WITH A SUBPOENA OR ORDER ISSUED UNDER THIS SUBSECTION, ON PETITION OF THE DEPARTMENT, A CIRCUIT COURT, BY ORDER, MAY:**

- 1. COMPEL OBEDIENCE TO THE DEPARTMENT'S ORDER OR SUBPOENA; OR**
- 2. COMPEL TESTIMONY OR THE PRODUCTION OF EVIDENCE.**

**(IV) THE COURT MAY PUNISH AS A CONTEMPT ANY FAILURE TO OBEY ITS ORDER ISSUED UNDER THIS SECTION.**

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**(A) ANY PERSON WHO HAS AN INTEREST THAT IS OR MAY BE ADVERSELY AFFECTED MAY COMMENCE A CIVIL ACTION ON HIS OWN BEHALF TO COMPEL COMPLIANCE WITH THIS SUBTITLE:**

**(1) AGAINST ANY PERSON WHO IS ALLEGED TO BE IN VIOLATION OF ANY REGULATION, ORDER, OR PERMIT ISSUED UNDER THIS SUBTITLE; OR**

**(2) AGAINST THE DEPARTMENT WHERE THERE IS ALLEGED A FAILURE OF THE DEPARTMENT TO PERFORM ANY ACT OR DUTY UNDER THIS ACT WHICH IS NOT DISCRETIONARY.**

**(B) AN ACTION MAY NOT BE COMMENCED UNDER SUBSECTION (A) OF THIS SECTION IF:**

**(1) THE PLAINTIFF HAS NOT GIVEN NOTICE OF THE ALLEGED VIOLATION TO THE DEPARTMENT, THE ATTORNEY GENERAL, AND TO ANY ALLEGED VIOLATOR AT LEAST 60 DAYS PRIOR TO COMMENCING SUIT; OR**

**(2) THE DEPARTMENT HAS COMMENCED AND IS DILIGENTLY PROSECUTING A CIVIL ACTION TO REQUIRE COMPLIANCE UNDER THIS SUBTITLE, BUT ANY PERSON MAY INTERVENE IN THE ACTION AS A MATTER OF RIGHT.**

**(C) IN ANY SUCH ACTION UNDER SUBSECTION (A)(1) OF THIS SECTION THE DEPARTMENT, IF NOT A PARTY, MAY INTERVENE AS A MATTER OF RIGHT.**

**(D) THE COURT, IN ISSUING ANY FINAL ORDER IN ANY ACTION BROUGHT PURSUANT TO SUBSECTION (A) OF THIS SECTION, MAY AWARD COSTS OF LITIGATION (INCLUDING REASONABLE ATTORNEY AND EXPERT WITNESS FEES) TO ANY PREVAILING PARTY, WHENEVER THE COURT DETERMINES SUCH AN AWARD IS APPROPRIATE. THE COURT MAY, IF A TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION IS SOUGHT, REQUIRE THE FILING OF A BOND OR EQUIVALENT SECURITY.**

**(E) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT IN APPLYING THE PROVISIONS OF THIS SECTION, THE FEDERAL STANDARDS FOR STANDING APPLY TO PERSONS FILING AN ACTION PURSUANT TO THIS SECTION.**

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**(F) THIS SECTION IS INTENDED TO BE READ IN CONJUNCTION WITH AND TO SUPPLEMENT THE PROVISIONS OF TITLE 1, SUBTITLE 6 OF THIS ARTICLE, BUT IN THE EVENT OF ANY CONFLICT, THE REQUIREMENTS OF SUBSECTIONS (A) THROUGH (E) OF THIS SECTION SHALL PREVAIL.**

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect upon State assumption of the federal program under § 404 of the Clean Water Act. It is the intent of the General Assembly that the Department shall submit a substantially complete application to the U. S. Environmental Protection Agency for the assumption of the federal permit program under § 404 of the Clean Water Act on or before June 30, 2018. If the Department does not assume the federal program under § 404 of the Clean Water Act on or before June 30, 2020, this Act shall be null and void without the necessity of further action by the General Assembly.

SECTION 3. AND BE IT FURTHER ENACTED, That upon State assumption of the federal program under § 404 of the Clean Water Act, the Department of the Environment shall submit the annual report required by the U. S. Environmental Protection Agency to the General Assembly in accordance with § 2-1246 of the State Government Article, and shall make the report available to interested persons.